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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1207

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or ''the Board'') is publishing final regulations that adopt previously published interim regulations revising 5 CFR part 1207. These final regulations are necessary to reconcile the Board's regulations with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and to clarify the procedures for processing those complaints filed against the Board that allege discrimination on the basis of disability during the Board's adjudication of a related employee appeal.

DATES: This rule is effective August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: On May 9, 2005, the Board published amendments to 5 CFR part 1207 as an interim rule with request for comments (70 FR 24293). The Board received no comments during the 60 days allowed for receipt of public comments. This final rule makes no changes to the previously published interim rule. See 70 FR 24293 for additional information concerning the Board's revision of 5 CFR 1207.

Accordingly, the Board adopts the interim rule published at 70 FR 24293 on May 9, 2005, as a final rule effective August 26, 2005.

Bentley M. Roberts, Jr.,
Clerk of the Board.

[FR Doc. 05–17050 Filed 8–25–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA88

Fees Assessed by the Service

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is amending the regulation regarding fees assessed to delegated States and designated official agencies, hereafter known as official agencies, authorized by GIPSA to provide official inspection and weighing services to the U.S. grain industry. The fee adjustment is necessary to collect sufficient revenue to cover the current and future cost of supervising the performance of the official agencies.

Current supervision fees are charged to official agencies on a unit basis and represent an average rate of approximately 0.8 cent per metric ton of grain inspected or weighed by the official agencies. The final supervision fee increases the rate to a 1.1 cents per metric ton charge. Official agencies include the cost of GIPSA's supervision fee as part of the fee they charge their customers for grain services. The current average cost for services provided by official agencies is 21 cents per metric ton. Increasing the supervision fee by approximately 0.3 cent per metric ton will minimally increase the total cost of inspection and weighing services to the grain industry.

DATES: Effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, telephone (202) 720–0228 at USDA, GIPSA, Room 2409, 1400 Independence Avenue, SW., Washington, DC 20250–3630; Fax Number (202) 720–1015; E-mail address *David.M.Orr@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The United States Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) authorizes GIPSA to supervise grain inspection and weighing services provided by official agencies and to charge and collect reasonable fees to cover the cost of such supervision. These fees are charged by official agencies to their customers (grain industry) as part of the overall fee charged for inspection and weighing services. Supervision fees collected by GIPSA cover, as nearly as practicable, the program and administrative costs of supervising official agencies. The current supervision fees were published in the **Federal Register** on May 13, 2004 (69 FR 26476), and became effective June 14, 2004. This action adjusted only the supervision fee charged to delegated States for the inspection and weighing of export grain shipments. All other supervision fees remained unchanged. The fee for export grain shipments was changed from a unit fee of $49.20 per inspection to 1.6 cents per metric ton.

The fees unchanged by the June 14, 2004, action were last amended in September 23, 1985, as published in the **Federal Register** (50 FR 38503) and became effective on October 1, 1985. At that time, supervision fees were lowered an average 40 percent due to the accumulation of a $4.5 million reserve in retained earnings. The fee rates established on October 1, 1985, were set at a level so that the program operated at a net loss in order to reduce the operating reserves on a planned gradual basis. During the 19 year span from 1985 to 2004, GIPSA has gradually reduced the retained earnings in this program and has reached a point where an adjustment is needed to cover current and future program costs. In FY 2004, the official agency supervision program operating costs totaled $2,606,826, while revenue amounted to $1,527,713, a negative margin of $1,079,113. The retained earnings balance was $867,191 at the end of FY 2004. GIPSA projects the official agency supervision program deficit to continue at a comparable rate, and estimates that at the end of FY 2006, the program's retained earnings will be negative $1.1 million.

GIPSA regularly reviews its user-fee-financed programs under the USGSA (7 U.S.C. 71 *et seq.*) to determine if the fees are adequate. GIPSA recognizes the need to reduce inspection and weighing supervision costs as much as possible before increasing fees and therefore has taken action through the years to minimize costs. GIPSA plans to reduce costs by initiating a transition to a central monitoring program. This action, scheduled for implementation in FY 2008, should reduce overall operating expenses an estimated $1.2 million or 43 percent. Implementing the central monitoring process, coupled with a new supervision fee, will assist GIPSA in reaching an adequate 3-month retained earnings balance.

GIPSA completed a review of the official agency inspection and weighing programs and determined it was necessary to propose a change in the manner in which it collects user fees and to increase fees in order to recover the retained earnings to their desired 3-month level. On March 21, 2005, GIPSA proposed in the **Federal Register** (70 FR 13411) to amend the fees to recover the costs associated with administering the official agency supervision program. This action would maintain GIPSA's financial stability to assure continued inspection and weighing services to the grain industry, which will further facilitate the sound and orderly marketing of grain in domestic and export markets.

The current supervision fee is assessed on a unit or carrier basis and does not necessarily reflect the amount of grain inspected and weighed. GIPSA believes assessing supervision fees proportionate to the weight of grain inspected and/or weighed is a reasonable approach. This process was implemented for the supervision of export grain inspected and weighed by Delegated States in the changes effective June 14, 2004 (69 FR 26476). Therefore, GIPSA proposed charging all supervision fees based on a per metric ton basis.

In FY 2004, customers of official agencies, the grain industry, paid an estimated $39 million or 21 cents per metric ton for official inspection and weighing services on an estimated 187 million metric tons of grain. Of the $39 million paid for services, $1,527,713 (3.92 percent or 0.82 cents per metric ton) represented GIPSA collected supervision fees. GIPSA's actual program costs for FY 2004 were $2,606,826 or 1.39 cents per metric ton which resulted in a net loss of approximately 0.57 cents per metric ton.

To minimize the impact of a fee increase, GIPSA proposed supervision fee rates that would collect sufficient revenue over time to cover operating expenses, while striving to create a 3-month operating reserve by FY 2014. The cost of living projections used in calculating future salary, benefits, and all other non-salary expenses out to FY 2014 were supplied by the Office of Management and Budget (OMB) as set forth in their **Federal Register** publication (69 FR 26900) on May 14, 2004. In projecting revenue to FY 2014, GIPSA used a 5 year average of the total tons inspected and/or weighed by official agencies. GIPSA will evaluate the financial status of the supervision of the grain inspection and weighing program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2014, and to determine if other adjustments are necessary.

GIPSA proposed to gradually replenish the reserve rather than sharply increase supervision fees in the short term to immediately replenish the retained earnings. GIPSA proposed a change in the supervision fees and a change in the methodology for assessing supervision fees to official agencies. Section 800.71 of the regulations provides that the fees shown in Schedule C apply to official inspection and weighing services performed by delegated States and designated agencies in the United States, except for those State agencies that are delegated additional responsibilities by GIPSA. These States are assessed annual charges as noted in the State's Delegation of Authority document. GIPSA has a long-standing agreement with the State of Washington whereby the State pays GIPSA for direct local costs along with their portion of the national administrative costs. The financial data and information used to develop the fees for Schedule C did not include the costs and tonnage associated with the State of Washington since the State is charged for their direct local costs and their share of the national administrative costs as established by the agreement.

GIPSA projected that the new fees should be implemented no later than FY 2007 and projected costs to FY 2014 to develop the new fees for Schedule C. GIPSA projections are based on an average total inspection and weighing tonnage of 170 million metric tons per year.

GIPSA determined that if the new fees are implemented by FY 2007 and the goal is to replenish the retained earnings and 3-month operating reserve by FY 2014, then GIPSA will need to collect approximately $1.9 million per year from FY 2007 through FY 2014 to achieve this goal. GIPSA concluded that a 1.1 cents per metric ton fee would generate approximately $1.9 million per year based on an average annual service volume of 170 million metric tons. This new fee would generate sufficient funds to rebuild the retained earnings to its desired 3-month level by FY 2014. GIPSA will continue to monitor and evaluate the program to ensure the goal is achieved.

GIPSA also proposed to change the method to assess supervision fees to the official agencies. GIPSA has historically charged supervision fees based on the type of carrier serviced and further charged supervision fees based on the kinds and levels of services received. GIPSA proposed to charge the 1.1 cents per metric ton supervision fees based on the total tonnage of grain officially inspected and/or weighed by official agencies. GIPSA proposed to utilize a standard metric ton conversion rate for submitted samples and specific carriers serviced in order to calculate and assess the supervision fees to the official agencies. The following table illustrates the standard metric ton conversion rate that GIPSA will use to assess the total tons serviced by the official agencies.

Carrier/service	Estimated metric tons
Truck	19.39
Submitted Sample	19.39
Container	20.04
Railcar	103.42
Midwest Barge	1,292.74
Pacific Northwest Barge	2,267.96

GIPSA determined that ships will be assessed the 1.1 cents per metric ton supervision fee based on the actual certified weight for the ship.

The change in supervision fees would increase the average current fee rate by approximately 0.3 cent per metric ton. This additional increase should minimally affect the amount an applicant (grain industry) pays for service.

Comment Review

GIPSA received comments in response to the proposed rulemaking published March 21, 2005, in the **Federal Register** (70 FR 13411). One comment indicated that GIPSA should streamline its operations and reduce staff before imposing a fee increase. As discussed earlier in this document, GIPSA recognizes the need to reduce inspection and weighing costs as much as possible before increasing fees and has taken action through the years to minimize costs. However, the fee adjustment is necessary to collect sufficient revenue to cover the current

and future costs of supervising the performance of official agencies. A second response did not respond to the proposed action. Consequently, GIPSA is implementing the fee changes as they were proposed.

Executive Orders 12866 and 12988

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the OMB. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Sec. 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this rule has been approved by the OMB under control number 0580–0013.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Regulatory Flexibility Act Certification

GIPSA has determined that this rule does not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the majority of applicants (grain industry) that apply for these official services, and are subjected to GIPSA supervision fees, do not meet the requirements for small entities. This rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 18 export elevators in the United States that could receive services from delegated States or designated agencies. Official services are available from 7 delegated States and 49 designated agencies. For clarification, any and all grain that is exported from the U.S. export port locations must, as required by the USGSA, be inspected and/or weighed. These services are either performed by GIPSA or delegated States. Further, some grain exported from interior locations may also require inspection and/or weighing services unless the services are waived as provided in section 800.18 of the regulations. These services are provided by designated agencies. The USGSA does not require inspection or weighing services for grain marketed within the U.S. Consequently, these services are permissive and may be performed by official agencies. The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide supervision of official grain inspection and weighing services, and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs.

GIPSA realizes that any increase in supervision fees will be charged by official agencies to the users (grain industry) of the official grain inspection and weighing system.

Although, the overall effect of this rule will be passed on to the users of official grain inspection and weighing services, mostly large corporations, David R. Shipman, Acting Administrator, GIPSA, has determined that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

■ 2. In § 800.71, paragraph(a), Schedule C is amended by removing Tables 1 and 2 and adding introductory text in their place to read as follows:

§ 800.71 Fees assesses by the Service.

(a) * * *

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES.

The supervision fee is charged at $0.011 per metric ton inspected and/or weighed.

* * * * *

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–16952 Filed 8–25–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV05–984–1 IFR]

Walnuts Grown in California; Suspension of Provision Regarding Eligibility of Walnut Marketing Board Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends a provision of the walnut marketing order (order) pertaining to eligibility of members to serve on the Walnut Marketing Board (Board). The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. This action is an interim measure to address a change in industry structure affecting cooperative marketing association related positions. This will allow the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July, 2005.

DATES: Effective August 29, 2005; comments received by October 25, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposal to: Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during

regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), hereinafter referred to as the ''order'', regulating the handling of walnuts grown in the State of California. The marketing agreement and order are effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule suspends a provision of the walnut marketing order (order) pertaining to eligibility of members to serve on the Walnut Marketing Board (Board). The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. This action is an interim measure to address a change in industry structure affecting cooperative marketing association related positions. This will allow the Board to continue to represent the industry's interests while the order is amended to reflect the change in industry structure. The Board unanimously recommended a suspension action by mail balloting in early July, 2005.

Section 984.35 of the order establishes the Board as the administrative body appointed by USDA to administer the order. That section also specifies composition of the Board, and allocates seats to cooperative and independent growers and handlers. The Board is comprised of ten members and ten alternate members. Two members represent handlers that are cooperative marketing associations of growers (cooperative handlers), and two members represent growers who market their walnuts through cooperative handlers. Two members represent handlers that are not cooperative marketing associations of growers (independent handlers), and two members represent growers that market their walnuts through independent handlers. One member represents growers that market their walnuts through either cooperative or independent handlers, whichever category handled over fifty percent of the walnuts handled by all handlers in the industry in the immediately preceding two marketing years. In recent years, this Board position has been allocated to the independent category. One member represents neither growers nor handlers (public member).

Section 984.38 of the order provides, in part, that no person shall be selected or continue to serve as a member or alternate member of the Board unless that person is engaged in the business of the group he or she was nominated to represent.

A change recently occurred in the walnut industry that impacts composition of the Board. A large cooperative marketing association recently converted to a publicly held corporation. The former cooperative association held two grower and two handler positions on the Board.

In order to address this change, section 984.38 of the order needs to be suspended to allow a representative Board to continue in place while the order is amended to reflect the new industry structure. Therefore, the Board recommended through a mail ballot vote in early July, 2005, to suspend the order provision. USDA has reviewed the recommendation and has determined that suspending § 984.38 of the order regarding eligibility requirements of Board members will accomplish that objective. As previously discussed, § 984.38 provides that no person shall be selected or continue to serve as a member or alternate member of the Board unless that person is engaged in the business of the group he or she was nominated to represent.

If the eligibility requirements are not suspended, four of the Board members that represented the cooperative become ineligible to serve on the Board. However, these members continue to represent a significant portion of the industry. Suspending the order provision regarding eligibility of Board members allows a complete Board to remain in place. This action will enable a Board that is representative of the walnut industry to continue to administer the order without disruption while the order is being amended to reflect changes in the industry structure.

This action suspends § 984.38 of the order entitled ''Eligibility''. This action is in the best interest of handlers and growers in the California walnut industry as the industry transitions through a structural change.

Initial Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 5,000 producers of walnuts in the production

area and 50 walnut handlers subject to regulation under the marketing order. Small agricultural service firms are defined as those whose annual receipts are less than $6,000,000 and small agricultural producers have been defined by the Small Business Administration as those having annual receipts less than $750,000 (13 CFR 121.201).

Industry information from the Walnut Marketing Board indicates that 36 of the 50 walnut handlers, or 72%, shipped less than $6,000,000 worth of walnuts and could be considered small businesses by the Small Business Administration. In addition, only an estimated 60 producers, or 1.2%, have annual receipts in excess of $750,000. Based on the foregoing, the majority of walnut producers and handlers regulated under the marketing order may be classified as small entities.

This rule suspends provisions of the walnut marketing order (order) pertaining to eligibility of members to serve on the Walnut Marketing Board (Board). The order regulates the handling of walnuts grown in California, and the Board is responsible for local administration of the order. Specifically, this action suspends § 984.38 of the order entitled ''Eligibility''.

Due to structural changes in the industry, the order provisions regarding Board composition no longer accurately reflect the industry composition. If the eligibility requirements are not suspended, four of the Board members that represented the cooperative become ineligible to serve on the Board. However, these members continue to represent a significant portion of the industry. Suspending the order provision regarding eligibility of Board members allows a complete Board to remain in place. This action will enable a Board that still represents the walnut industry to continue to administer the order without disruption while the order is being amended to reflect changes in the industry structure. The Board unanimously recommended suspending order language by mail balloting in early July, 2005.

Alternatives to this action were considered. One alternative was to remove the former cooperative members from the Board, which would result in a 6-member Board. This was not considered a preferred option because it would limit the size of the Board.

This rule suspends order language pertaining to membership eligibility on the Walnut Marketing Board. Accordingly, this action does not impose any additional reporting or recordkeeping requirements, or any other costs, on either small or large walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on suspending order provisions regarding eligibility of Board members under the California walnut marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that the order language being suspended, as hereinafter set forth, no longer tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Board unanimously recommended these changes; (2) these changes are needed to allow a representative Board to remain in place to administer the order; and (3) this rule provides a 60-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

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

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In part 984, § 984.38 is suspended indefinitely.

Dated: August 23, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–17055 Filed 8–23–05; 4:46 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 993 and 999

[Docket No. FV05–993–2 FIR]

Dried Prunes Produced in California; Suspension of Handling and Reporting Requirements, Extension of the Suspension of Outgoing Inspection and Volume Control Regulations, and Extension of the Suspension of the Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending indefinitely all remaining handling and most reporting requirements under Marketing Order No. 993. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (committee). The interim final rule being adopted by this action also indefinitely extends the suspensions of the outgoing inspection and prune import regulations and volume control regulations, currently temporarily suspended until August 1, 2006, and August 1, 2008, respectively. The interim final rule was effective August 1, 2005.

DATES: Effective September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (559) 487–5901, Fax: (559) 487–5906; or Kathy Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

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

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

SUMMARY: This rule adopts the suspension of the handling and reporting requirements under the marketing order and the prune import regulation, beginning with the 2005–2006 crop year, and continuing indefinitely. The provisions could either be reactivated or terminated. The 2005–2006 crop year begins on August 1, 2005. This action also adopts the extension of the current temporary suspensions of the outgoing inspection and the volume control regulations. This rule was unanimously recommended by the committee at a meeting on March 15, 2005.

Marketing Order Authority for Suspension

Section 993.90(a) of the prune marketing order provides, in part, that the Secretary ''shall terminate or suspend the operations of any or all of the provisions of the subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the ''Act.'' Information from the committee, or other sources, may be used by the Secretary in making the determination.

Being cognizant that some growers and packers believe the marketing order has become overly complex and restrictive in today's more technologically-advanced, global market, the committee has held task force meetings over the last two years to solicit input from the industry on amending the order. However, little progress has resulted from those meetings concerning the best method to streamline the existing order and update it to reflect modern packing methods and marketing strategies. Thus, at its meeting on March 15, 2005, the committee voted unanimously to recommend to USDA that the handling and reporting requirements, including the currently-suspended outgoing inspection and volume-control regulations, be suspended indefinitely.

Because the committee would need to obtain information on the tonnage received by each handler to properly allocate committee member and alternate positions, and to assess handlers for their prorate share of expenses, the committee has arranged with the California Department of Food and Agriculture and the California Dried Plum Board (CDPB) to receive such information as needed from CDPB for this purpose.

On April 16, 2004, the committee approved a motion to submit a request to USDA no later than January 15, 2005, to suspend the marketing order for one year, effective August 1, 2005, through July 31, 2006. At that time, the committee believed that the lead time provided by this recommended suspension permits the industry to consider what portions of the suspended Federal marketing order should be added to the California State marketing order for dried plums.

In accordance with the committee's April 16, 2004, resolution, on December 8, 2004, it recommended to USDA that the marketing order be suspended for one crop year, beginning August 1, 2005, and requested that the current committee members to be appointed as trustees during the suspension period.

On February 23, 2005, the Executive Committee reconsidered their recommendation to suspend the entire order and have the current members named as trustees. The Executive Committee made a subsequent recommendation to committee to rescind the December 8, 2004, recommendation. The Executive Committee then recommended the handling and reporting requirements be suspended indefinitely, and forwarded that revised recommendation to the full committee, as well. The revised recommendation also included extending the temporary suspensions of outgoing inspection and volume control regulations, which would have ended on August 1 of 2006 and 2008, respectively. As stated earlier, on March 15, 2005, the committee revised its recommendation accordingly.

Prune Import Regulations

Section 8e of the Act provides that when certain domestically-produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule indefinitely suspends the handling regulations, including grade, size, and quality requirements, these requirements will continue to be suspended in the import regulations. Currently, the prune import regulations are suspended through July 31, 2006.

U.S. imports of dried prunes are insignificant compared to U.S. production. In 2002, while the U.S. produced 158,000 tons of dried prunes, only 616 tons were imported. In that year, the domestically-produced tonnage was over 250 times larger than the imported tonnage.

In recent years, as volumes of domestically-produced prunes have fluctuated imports have also fluctuated, but imported prunes continue to represent a very small portion of the available prune products in the U.S. market.

Argentina, Chile, France, Mexico, Iran, and Turkey export prunes to the United States, with Argentina accounting for approximately 90 percent of all U.S. imports.

Handling Requirements

Under the order, §§ 993.48 through 993.59, and §§ 993.62 authorized requirements upon handlers to meet grade and size requirements, obtain both incoming and outgoing inspection, label prunes appropriately, and hold a portion of the crop in reserve. The order's rules and regulations establish similar requirements.

Currently the provisions for outgoing inspections and reserve disposition are suspended in both the order and the order's rules and regulations until August 1, 2006, and August 1, 2008, respectively. This rule suspends indefinitely all the remaining handling requirements.

Reporting Requirements

Under §§ 993.71 through 993.75, the order also includes authority to require that handlers file reports with the committee on acquisitions, accountings, holdings, uses, sales, and shipments of prunes. The order's rules and regulations include similar requirements, except that some of these provisions are currently suspended, as they relate to volume control requirements.

This action suspends indefinitely those requirements, along with other handling requirements and the reporting requirements.

As stated previously, the committee would enter into an agreement with the CDPB to collect information necessary for allocating committee member and alternate member positions and for continuing assessments on a limited basis.

A Listing of Marketing Order Provisions To Be Suspended

As noted, handling and reporting requirements will be suspended indefinitely. Included are provisions in the order regarding outgoing inspection and volume control regulations, which are currently temporarily suspended until August 1, 2006, and August 1, 2008, respectively.

In a conforming action, the provisions related to marketing policy are suspended, as well. Under the order the committee is required to establish a marketing policy annually if handling requirements are recommended. If no handling regulations are recommended due to suspension, no marketing policy statement is required.

Certain provisions and parts of certain provisions are currently suspended until a specified time. This rule will indefinitely suspend those provisions or parts of certain provisions, as well as additional provisions. The following list of provisions or parts of provisions being suspended are listed below chronologically and notations are made to clarify which provisions or parts of provisions are currently suspended.

Section 993.21d Reserve prunes (currently suspended through 2008)

Section 993.33 Voting procedure (partially suspended through 2008)

Section 993.36(i) Duties (currently suspended through 2008)

Section 993.41 Marketing policy

Section 993.48 Regulation

Section 993.49 Incoming regulation

Section 993.50 Outgoing regulation (partially suspended through 2006)

Section 993.51 Inspection and certification (partially suspended through 2006)

Section 993.52 Modification

Section 993.53 Above parity situations

Section 993.54 Establishment of salable and reserve percentages (currently suspended through 2008)

Section 993.55 Application of salable and reserve percentages after end of crop year (currently suspended through 2008)

Section 993.56 Reserve obligation (currently suspended through 2008)

Section 993.57 Holding requirement and delivery (currently suspended through 2008)

Section 993.58 Deferment of time for withholding (currently suspended through 2008)

Section 993.59 Payment to handlers for services (currently suspended through 2008)

Section 993.62 Diversion privileges (currently suspended through 2008)

Section 993.65 Disposition of reserve prunes (currently suspended through 2008)

Section 993.72 Reports of acquisitions, sales, uses, and shipments

Section 993.73 Other reports

Section 993.74 Records

Section 993.75 Verification of reports

Section 993.97 Exhibit A; minimum standards (partially suspended through 2006)

Section 993.104 Lot

Section 993.105 Size count

Section 993.106 In-line inspection

Section 993.107 Floor inspection

Section 993.108 Non-human consumption outlet

Section 993.149 Receiving of prunes by handlers

Section 993.150 Disposition of prunes by handlers (partially suspended through 2006)

Section 993.156 Application of reserve percentage (currently suspended through 2008)

Section 993.157 Holding and delivery of reserve prunes (currently suspended through 2008)

Section 993.158 Deferment of reserve withholding (currently suspended through 2008)

Section 993.159 Payments for services performed with respect to reserve tonnage prunes (currently suspended through 2008)

Section 993.162 Voluntary prune plum diversion (currently suspended through 2008)

Section 993.165 Disposition of reserve prunes (currently suspended through 2008)

Section 993.172 Reports of holdings, receipts, uses, and shipments (partially suspended through 2008)

Section 993.173 Reports of accounting (partially suspended through 2008)

Section 993.174 Records

Section 993.400 Modifications

Section 993.409 Undersized prune regulation for the 2002–03 crop year

Section 993.501 Consumer package of prunes

Section 993.503 Size category

Section 993.504 In-line inspection

Section 993.505 Floor inspection

Section 993.506 Lot

Section 993.515 Size categories (currently suspended through 2006)

Section 993.516 Tolerance and limitations (currently suspended through 2006)

Section 993.517 Identification (currently suspended through 2006)

Section 993.518 Compliance (currently suspended through 2006)

Section 993.601 More restrictive grade regulation (partially suspended through 2006)

Section 993.602 Maximum tolerances

Final Regulatory Flexibility Analysis

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

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

There are approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000.

An industry profile shows that 8 out of 21 handlers (38 percent) shipped over $6,000,000 worth of dried prunes in

2003 and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped under $6,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,100 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

In addition, there are an estimated 30 importers, and one third-party entity that performs inspections under the order. USDA does not have precise information on these entities, but believes that the majority of the importers and the third-party inspection agency are small entities.

As recommended by the Committee, this rule indefinitely suspends handling and reporting requirements under the marketing order, including extending the temporary suspensions of outgoing inspection requirements and reporting regulations and the import regulations.

Impact of the Regulation

This action reduces the reporting and recordkeeping requirements for California prune handlers and importers; and reduces the committee's, prune handlers', and prune importers' associated administrative costs. This action also reduces the number of inspections performed by the inspection agency for both handlers and importers.

The benefits of this final rule are expected to accrue to all prune handlers and importers regardless of their size.

Alternatives Considered

The deliberations about suspension of the marketing order for one year began at meetings held on April 3 and May 1, 2003, and continued to the present. In April 2004, the committee believed that such a suspension provides the industry with an opportunity to operate without regulation. For some members, a suspension was preferable to termination.

At the December 8, 2004, meeting, the committee discussed the impact of and alternatives to suspending the entire marketing order, and at the February 23, 2005, Executive Committee meeting, the members and industry representatives discussed the impact of and alternatives to suspending handling and reporting requirements, including extending the current suspensions of outgoing inspection requirements and reporting regulations.

At the March 15, 2005, committee meeting, the members received the recommendations of the Executive Committee and, being in unanimous accord, voted to rescind their previous recommendation to suspend the entire order in favor of recommending that the handling and reporting requirements be suspended indefinitely, including the currently-suspended outgoing inspection and volume control regulations.

The suspension permits the industry to operate for an indefinite period of time without most order requirements. This will allow growers and handlers time to consider which provisions in the marketing order might continue to meet their future needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. On the contrary, this action will remove reporting requirements on all prune handlers indefinitely. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the committee's meetings were widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues at any meeting in the last two years, including task force meetings. Like all committee meetings, the April 16 and December 8, 2004, meetings; and the February 23 and March 15, 2005, meetings were public meetings; and all entities, both large and small, were encouraged to express views on this issue. The committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the committee, its Executive Committee, and the marketing order task force, provide broad industry representation. Thus, this rule reflects their considerable deliberations and determinations. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small business.

Further, the Committee's meeting was widely publicized throughout the Prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 15, 2005, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 27, 2005. Copies of the rule were mailed by the Committee staff to all Committee members and Prune handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended July 26, 2005. No comments were received.

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

The U.S. Trade Representative has reviewed this final rule and concurs with its issuance.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (70 FR 30610, May 27, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Plums, Prunes, Raisins, Reporting and recording keeping requirements, Walnuts.

■ Accordingly, the interim final rule amending 7 CFR Part 993 and 999 which was published at 70 FR 30610 on May 27, 2005, is adopted as a final rule without change.

Dated: August 22, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–16996 Filed 8–25–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20794; Directorate Identifier 2004–NM–172–AD; Amendment 39–14235; AD 2005–17–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Airbus Model A300 B2 and B4 series airplanes; Model A300–600 series airplanes; and Model A310–200 and –300 series airplanes. That AD currently requires, among other actions, repetitive tests to detect desynchronization of the rudder servo actuators, and adjustment or replacement of the spring rods of the rudder servo actuators, if necessary. This new AD requires new repetitive tests/inspections/analyses of the rudder servo actuators, and related investigative/corrective actions if necessary. Accomplishment of the new actions ends the existing repetitive requirements. This AD is prompted by new reports of desynchronization of the rudder servo actuators. We are issuing this AD to prevent desynchronization of one of the three rudder servo actuators, which, if combined with an engine failure, could result in the loss of the related hydraulic system and could cause the loss of one of the two synchronized actuators. This condition could create additional fatigue loading and possible cracking on the attachment fittings and could result in the inability of the remaining synchronized actuator to maintain the commanded rudder deflection, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective September 30, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of September 30, 2005.

On July 30, 1998 (63 FR 34580, June 25, 1998), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20794; the directorate identifier for this docket is 2004–NM–172–AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 98–13–33, amendment 39–10624 (63 FR 34580, June 25, 1998). The existing AD applies to all Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–200 and –300 series airplanes. The proposed AD was published in the **Federal Register** on April 5, 2005 (70 FR 17212), to continue to require repetitive tests to detect desynchronization of the rudder servo actuators, and adjustment or replacement of the spring rods of the rudder servo actuators, if necessary. The proposed AD would also require new repetitive tests/inspections/ analyses of the rudder servo actuators, and related investigative/corrective actions if necessary. The proposed AD states that accomplishing the new actions ends the existing repetitive requirements.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request To Withdraw the Proposed AD

The commenter states that it can find no compelling reason for the proposed AD. The commenter notes that it has been accomplishing the requirements of AD 98–13–33 for several years and has had no significant findings. The commenter states that it has previously accomplished the actions in the parallel French airworthiness directive, F–2004–092, dated June 23, 2004, which introduced the inspection for dead travel of the input lever of the rudder servo control due to an isolated incident with a single operator. The commenter asserts that this incident most likely resulted from improper assembly and testing of the servo control during repair and overhaul of the component. Therefore, the commenter does not see the value of or need for the inspection for dead travel. The commenter suggests that resolution of the discrepancy with the input lever of the rudder servo control should be addressed by revising the applicable component maintenance manual.

We infer that the commenter is requesting that we withdraw the proposed AD. We do not agree. The information that we have received from the manufacturer and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, does not indicate that the malfunction or misadjustment of the spring rods of the rudder servo actuator is an isolated incident. We find that the new repetitive tests, inspections, and analyses of the rudder servo actuators that will be newly required by this AD are necessary to ensure that all potential causes of desynchronization of the rudder servo actuators are addressed. As explained previously, desynchronization of one of the three rudder servo actuators, if combined with an engine failure, could result in the loss of the related hydraulic system and, potentially, loss of one of the two synchronized actuators. This condition could create additional fatigue loading and possible cracking on the attachment fittings and could result in the inability of the remaining synchronized actuator to maintain the commanded rudder deflection, which could result in reduced controllability of the airplane. The tests, inspections, and analyses, as well as any necessary investigative and corrective actions, required by this AD are intended to address this unsafe condition. We have not changed the final rule in this regard.

Request To Remove Reporting Requirement

The commenter declares that the reporting requirement included in paragraph (n) of the proposed AD is unnecessary and does not enhance the value of the proposed requirements. The

commenter states that reporting data at this point would not be relevant because there have been numerous opportunities to correct the unsafe condition prior to the proposed AD.

We partially agree with the commenter's request. Reporting any discrepancy will help to determine the extent of the unsafe condition in the affected fleet. Based on the results of these reports, we may determine that further investigative or corrective action is necessary. Reporting any discrepancy may also help us to determine if other conditions, as yet undetected, are present in the fleet, which could lead to desynchronization of the rudder servo actuators. For these reasons, this AD will continue to require reporting any discrepancy in accordance with the applicable referenced Airbus service bulletin.

However, we have determined that it is not necessary to require reporting the inspection results in which there are no findings. Thus, we have revised paragraph (n) of this AD to specify that only positive findings must be reported.

Explanation of Change to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $65 per hour.

ESTIMATED COSTS

Action	Work hour	Parts	Cost per airplane, per cycle	Number of U.S.-registered airplanes	Fleet cost per cycle
Tests (required by AD 98–13–13)	1	None	$65	179	$11,635
Tests/inspections/analyses (new requirement)	1	None	65	179	11,635

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–10624 (63 FR 34580, June 25, 1998) and by adding the following new airworthiness directive (AD):

2005–17–14 Airbus: Amendment 39–14235. Docket No. FAA–2005–20794; Directorate Identifier 2004–NM–172–AD.

Effective Date

(a) This AD becomes effective September 30, 2005.

Affected ADs

(b) This AD supersedes AD 98–13–33, amendment 39–10624 (63 FR 34580, June 25, 1998).

Applicability

(c) This AD applies to all Airbus Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes; Model A300 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, C4–605R Variant F, F4–605R, and F4–622R airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by new reports of desynchronization of the rudder servo actuators. We are issuing this AD to prevent desynchronization of one of the three rudder servo actuators, which, if combined with an engine failure, could result in the loss of the related hydraulic system and could cause the loss of one of the two synchronized actuators. This condition could create additional fatigue loading and possible cracking on the attachment fittings and could result in the inability of the remaining synchronized actuator to maintain the commanded rudder deflection, which could result in reduced controllability 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.

Requirements of AD 98–13–33

Repetitive Tests and Adjustment or Replacement

(f) Prior to accumulation of 1,300 total flight hours, or within 500 flight hours after July 30, 1998 (the effective date of AD 98–13–33), whichever occurs later, and thereafter at intervals not to exceed 1,300 flight hours: Perform a test to detect desynchronization of the rudder servo actuators in accordance with Airbus Service Bulletin A300–27–0188, Revision 2, dated October 1, 1997 (for Model A300 series airplanes); A300–27–6036, Revision 2, dated October 1, 1997 (for Model A300–600 series airplanes); or A310–27–2082, Revision 2, dated October 1, 1997 (for Model A310–200 and –300 series airplanes); as applicable. If any desynchronization (rudder movement) is detected, prior to further flight, either adjust or replace, as applicable, the spring rod of the affected rudder servo actuator in accordance with the applicable service bulletin.

Note 1: A test to detect desynchronization of the rudder servo actuators, if accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–27–0188, dated October 24, 1996, or Revision 1, dated November 5, 1996 (for Model A300 series airplanes); A300–27–6036, dated October 24, 1996, or Revision 1, dated November 5, 1996 (for Model A300–600 series airplanes); or A310–27–2082, dated October 24, 1996, or Revision 1, dated November 5, 1996 (for Model A310–200 and –300 series airplanes); is considered acceptable for compliance with the initial test required by paragraph (f) of this AD.

(g) Except as provided by paragraph (h) of this AD, if any desynchronization (rudder movement) greater than the limit specified in Paragraph B of the Accomplishment Instructions of the applicable service bulletin is detected during any test required by paragraph (f) of this AD, prior to further flight, accomplish either paragraph (g)(1) or (g)(2) of this AD, in accordance with Airbus Service Bulletin A300–55–0044, dated October 22, 1996 (for Model A300 series airplanes); A300–55–6023, dated October 22, 1996 (for Model A300–600 series airplanes); or A310–55–2026, dated October 22, 1996 (for Model A310 series airplanes); as applicable.

(1) Conduct a visual inspection, high frequency eddy current inspection, or ultrasonic inspection, as applicable, to detect cracking of the rudder attachments; and repeat the inspection thereafter, as applicable, at the intervals specified in the applicable service bulletin. Or

(2) Modify the rudder attachments to cold expand the rivet holes.

(h) If any crack is found during any inspection or modification required by paragraph (g) of this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair the affected structure in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or in accordance with a method approved by the Direction Générale de l'Aviation Civile (DGAC).

New Requirements of This AD

Service Bulletins

(i) The term ''primary service bulletin,'' as hereafter used in this AD, means the Accomplishment Instructions of the applicable primary service bulletin in Table 1 of this AD.

TABLE 1.—PRIMARY SERVICE BULLETINS

Airbus service bulletin—	For—
(1) A300–27–0188, including Appendix 01 and Reporting Sheet, Revision 05, dated April 16, 2004.	Model A300 B2 and B4 series airplanes.
(2) A300–27–6036, including Appendix 01 and Reporting Sheet, Revision 08, dated April 16, 2004.	Model A300–600 series airplanes.
(3) A310–27–2082, including Appendix 01 and Reporting Sheet, Revision 05, dated April 16, 2004.	Model A310–200 and –300 series airplanes.

(j) The primary service bulletin refers to the applicable secondary service bulletin in Table 2 of this AD as an additional source of service information for accomplishing the related investigative actions for certain conditions.

TABLE 2.—SECONDARY SERVICE BULLETINS

Airbus service bulletin—	For—
(1) A300–55–0044, Revision 03, dated April 16, 2004	Model A300 B2 and B4 series airplanes.
(2) A310–55–2026, Revision 02, dated April 16, 2004	Model A310–200 and –300 series airplanes.
(3) A300–55–6023, Revision 05, dated April 16, 2004	Model A300–600 series airplanes.

Compliance Times

(k) Do the actions specified in paragraph (l) of this AD at the following times:

(1) Within 700 flight hours after the effective date of this AD or within 1,300 flight hours after the last inspection required by either paragraph (f) or (g) of this AD, whichever occurs first; and

(2) Thereafter at intervals not to exceed 1,300 flight hours.

Tests/Inspections/Analyses and Related Investigative/Corrective Actions

(l) Do the actions specified in paragraphs (l)(1) through (l)(4) of this AD and any applicable related investigative/corrective actions by doing all the actions in accordance with the primary service bulletin, except as required by paragraph (m) of this AD. Related investigative and corrective actions must be done before further flight. Accomplishing these actions ends the requirements of paragraphs (f) through (h) of this AD.

(1) Do an operational test of the rudder system with each hydraulic system pressurized in turn.

(2) Do a static inspection for correct synchronization of the rudder servo controls with each hydraulic system.

(3) Inspect to find dead travel of the input lever of the rudder servo control for each hydraulic system.

(4) Analyze the results of the static inspection required by paragraph (l)(2) of this AD and the inspection to find dead travel required by paragraph (l)(3) of this AD.

(m) If the primary/secondary service bulletin recommends contacting Airbus for appropriate action: Before further flight, repair any discrepancy in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Reporting

(n) At the applicable time specified in paragraph (n)(1) or (n)(2) of this AD, submit a report only of positive findings in accordance with the primary service bulletin. Under the provisions of the Paperwork Reduction Act of 1980 (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.

(1) If the action specified in the primary service bulletin was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the action specified in the primary service bulletin was accomplished before the

effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously according to AD 98–13–33 are not approved as AMOCs with this AD.

Related Information

(p) French airworthiness directive F–2004–092, issued June 23, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(q) You must use the service information listed in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–27–0188	2	October 1, 1997.
A300–27–0188, including Appendix 01 and Reporting Sheet	05	April 16, 2004.
A300–27–6036	2	October 1, 1997.
A300–27–6036, including Appendix 01 and Reporting Sheet	08	April 16, 2004.
A300–55–0044	Original	October 22, 1996.
A300–55–6023	Original	October 22, 1996.
A310–27–2082	2	October 1, 1997.
A310–27–2082, including Appendix 01 and Reporting Sheet	05	April 16, 2004.
A310–55–2026	Original	October 22, 1996.

(1) The Director of the Federal Register approves th incorporatin by reference of the service information listed in Table 4 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 4.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–27–0188, including Appendix 01 and Reporting Sheet	05	April 16, 2004.
A300–27–6036, including Appendix 01 and Reporting Sheet	08	April 16, 2004.
A310–27–2082, including Appendix 01 and Reporting Sheet	05	April 16, 2004.

(2) On July 30, 1998 (63 FR 34580, June 25, 1998), the Director of the Federal Register previously approved the incorporation by reference of the service information listed in Table 5 of this AD.

TABLE 5.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A300–27–0188	2	October 1, 1997.
A300–27–6036	2	October 1, 1997.
A300–55–0044	Original	October 22, 1996.
A300–55–6023	Original	October 22, 1996.
A310–27–2082	2	October 1, 1997.
A310–55–2026	Original	October 22, 1996.

(3) To get copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16749 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22168; Directorate Identifier 2005–NM–146–AD; Amendment 39–14234; AD 2005–17–13]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Short Brothers Model SD3–60 airplanes. This AD requires an inspection of the rudder for damage, an inspection of the balance weight attachment for discrepancies, an inspection of the rudder horn spar and cleats for cracking and corrosion, and corrective action if necessary. This AD results from events in which fatigue cracking was found on the rudder horn spar. We are issuing this AD to detect and correct cracking and corrosion of the rudder horn spar, which could lead to detachment of the mass balance weight of the rudder. The detachment of the mass balance weight could jam or restrict the movement of the rudder, which could result in reduced controllability of the airplane. Loss of a mass balance weight could also damage other parts of the airplane, which could result in reduced controllability of the airplane, or could result in an injury to a person or damage to property on the ground.

DATES: Effective September 12, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 12, 2005.

We must receive comments on this AD by October 25, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all Short Brothers Model SD3–60 airplanes. The CAA advises that there have been reports of fatigue cracking found on the rudder horn spar. In one event, the rudder horn spar failed and the lower mass balance weights detached from the rudder horn spar, which caused structural damage to the rudder's front spar, rib 14, and outer skin. Cracking of the rudder horn spar, if not corrected, could lead to detachment of the mass balance weight of the rudder. The detachment of the mass balance weight could jam or restrict the movement of the rudder, which could result in reduced controllability of the airplane. Loss of a mass balance weight could also damage other parts of the airplane, which could result in reduced controllability of the airplane, or could result in an injury to a person or damage to property on the ground.

Relevant Service Information

Short Brothers has issued Alert Service Bulletin SD360–55–A22, Revision 1, dated August 4, 2005. The service bulletin describes procedures for doing a visual inspection of the rudder for damage and an inspection of the balance weight attachment for discrepancies (discrepancies include potential rudder restriction and detachment of the balance weight). The service bulletin also describes procedures for a detailed visual inspection of the rudder horn spar for cracking and corrosion, a borescope inspection of the cleats for cracking and corrosion, and corrective action if necessary. The corrective action includes replacement of the rudder horn spar and cleats as specified in Part C of the service bulletin and an optional temporary repair to the rudder horn spar that includes replacement of the cleats.

The CAA mandated the service bulletin and issued British airworthiness directive G–2005–0021, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in the United Kingdom.

The service bulletin refers to Short Brothers Repair Drawing SD3–03–6825XB, dated July 2005, as the appropriate source of service information for doing the temporary repair to the rudder horn spar including replacement of the cleats.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to detect and correct cracking and corrosion of the rudder horn spar, which could lead to detachment of the mass balance weight of the rudder. The detachment of the mass balance weight could jam or restrict the movement of the rudder, which could result in reduced controllability of the airplane. Loss of a mass balance weight could also damage other parts of the airplane, which could result in reduced controllability of the airplane, or could result in an injury to a person or damage to property on the ground. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Bulletin.''

Differences Between the AD and the Service Bulletin

When less than five cracks are detected in the rudder horn spar that are each 1 inch or less (and no cracks found on the cleats), Shorts Alert Service Bulletin SD360–55–A22 specifies to repetitively inspect every 25 flight cycles for up to 100 flight cycles. However, this AD does not permit further flight if any crack is detected in the rudder horn spar. We have determined that, because of the safety implications and consequences associated with that cracking, any crack found on the rudder horn spar must be repaired before further flight. In addition, the service bulletin does not specify what the corrective action is after 100 flight cycles. This AD requires either replacing the rudder horn spar with a new rudder horn spar and replacing the cleats, part number (P/N) SD3–33–6404XA and –6405XA, with new improved cleats; or doing the temporary repair and then replacing the rudder horn spar with a new rudder horn spar.

Clarification of Inspection Terminology

In this AD, the ''visual inspection'' specified in the service bulletin is referred to as a ''general visual inspection.'' We have included the definition for a general visual inspection in a note in the AD.

In this AD, the ''detailed visual inspection'' specified in the service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the AD.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–22168; Directorate Identifier 2005–NM–146–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–13 Short Brothers PLC: Amendment 39–14234. Docket No. FAA–2005–22168; Directorate Identifier 2005–NM–146–AD.

Effective Date

(a) This AD becomes effective September 12, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Shorts Model SD3–60 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from events in which fatigue cracking was found on the rudder horn spar. The FAA is issuing this AD to detect and correct cracking and corrosion of the rudder horn spar, which could lead to detachment of the mass balance weight of the rudder. The detachment of the mass balance weight could jam or restrict the movement of the rudder, which could result in reduced controllability of the airplane. Loss of a mass balance weight could also damage other parts of the airplane, which could result in reduced controllability of the airplane, or could result in an injury to a person or damage to property on the ground.

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 the Accomplishment Instructions of Shorts Alert Service Bulletin SD360–55–A22, Revision 1, dated August 4, 2005.

Inspections

(g) Within 5 flight cycles after the effective date of this AD, do a general visual inspection of the rudder for damage and of the balance weight attachment for discrepancies in accordance with Part A of the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual

examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no damage and no discrepancy is found, no further action is necessary for this paragraph.

(2) If any damage or discrepancy is found, before further flight, do a detailed inspection of the rudder horn spar and a borescope inspection of the cleats for cracking and corrosion in accordance with Part B of the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, do a detailed inspection of the rudder horn spar and a borescope inspection of the cleats for cracking and corrosion in accordance with Part B of the service bulletin, unless the inspections have already been done as required by paragraph (g)(2) of this AD.

(1) For airplanes on which a heavy landing has occurred before the effective date of this AD, do the inspections within 20 flight cycles or 7 days after the effective date of this AD, whichever occurs first.

(2) For airplanes on which a heavy landing has not occurred before the effective date of this AD, do the inspections at the earlier of the times specified in paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this AD.

(i) For airplanes on which a heavy landing occurs after the effective date of this AD, do the inspections within 20 flight cycles or 7 days after the heavy landing occurred, whichever occurs first.

(ii) For airplanes that have accumulated 28,800 or more total flight hours, do the inspections within 20 flight cycles or 7 days after the effective date of this AD, whichever occurs first.

(iii) At the applicable time specified in Table 1 of this AD.

TABLE 1.—CERTAIN COMPLIANCE TIMES FOR PART B INSPECTIONS

For airplanes that—	Do the inspections—
Have accumulated 25,000 or less total flight cycles	Within 80 flight cycles or 28 days after the effective date of this AD, whichever occurs first.
Have accumulated more than 25,000 total flight cycles but less than 50,000 total flight cycles.	Within 40 flight cycles or 14 days after the effective date of this AD, whichever occurs first.
Have accumulated 50,000 or more total flight cycles	Within 20 flight cycles or 7 days after the effective date of this AD, whichever occurs first.

Corrective Actions

(i) If, during any inspection required by paragraph (g)(2) or (h) of this AD, no crack is found and any corrosion found is within the limits specified in the service bulletin, no further action is required by this paragraph.

(j) If any crack is found during any inspection required by paragraph (g)(2) or (h) of this AD, do the corrective action specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable, except as required by paragraph (k) of this AD.

(1) If any crack is found on the rudder horn spar and there is no crack on any of the cleats, do the actions specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD.

(i) Before further flight, replace the rudder horn spar with a new rudder horn spar and replace the cleats, part numbers (P/N) SD3–33–6404XA and –6405XA, with new cleats, in accordance with Part C of the service bulletin.

(ii) Before further flight, do the temporary repair in accordance with Short Brothers Repair Drawing SD3–03–6825XB, dated July 2005, and within 300 flight cycles, replace the rudder horn spar with a new rudder horn spar, in accordance with Part C of the service bulletin.

(2) If any crack is found on the rudder horn spar and any crack is found on any cleat, do the actions specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) Before further flight, replace the rudder horn spar with a new rudder horn spar and replace all three cleats with new cleats, in accordance with Part C of the service bulletin.

(ii) Before further flight, do the temporary repair in accordance with Short Brothers Repair Drawing SD3–03–6825XB, dated July 2005, and within 300 flight cycles, replace the rudder horn spar with a new rudder horn spar, in accordance with Part C of the service bulletin.

(3) If any crack is found on any of the cleats and no cracks are found on the rudder horn spar, before further flight, replace the cleats with new cleats in accordance with Part C of the service bulletin or in accordance with Short Brothers Repair Drawing SD3–03–6825XB, dated July 2005.

(k) If, during any inspection required by paragraph (g)(2) or (h) of this AD, any corrosion is found that is outside the limits specified in the service bulletin, before further flight, replace the corroded part with a new part, in accordance with Part C of the service bulletin.

Actions Accomplished in Accordance With Previous Issue of Service Information

(l) Actions accomplished before the effective date of this AD in accordance with Shorts Alert Service Bulletin SD360–55–A22, dated July 6, 2005; and Short Brothers Repair Drawing SD3–03–6825XA, dated July 2005; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(n) British airworthiness directive G–2005–0021, dated July 6, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(o) You must use Shorts Alert Service Bulletin SD360–55–A22, Revision 1, dated August 4, 2005; and Short Brothers Repair Drawing SD3–03–6825XB, dated July 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Short Brothers, Airworthiness & Engineering Quality, PO Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA).

For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16750 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD; Amendment 39–14238; AD 2005–17–17]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2F Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca S.A. Arrius 2F turboshaft engines. This AD requires replacing certain O-rings on the check valve piston in the lubrication unit. This AD results from a report of a forced landing of a Eurocopter EC120B helicopter. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

DATES: Effective September 12, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 12, 2005.

We must receive any comments on this AD by October 25, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–2599, telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction General De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified us that an unsafe condition might exist on Turbomeca S.A. Arrius 2F turboshaft engines. In addition, on May 13, 2005, an uncommanded in-flight engine shutdown (IFSD) of an Arrius 2F engine resulted in the forced landing of a Eurocopter EC120B helicopter in the Gulf of Mexico. Investigation of the engine found that an interruption of engine lubrication due to excessive swelling of the check valve O-ring in the lubrication unit caused the IFSD. The amount of swelling of the O-ring depends on the class of oil used, standard (STD) or high-thermal stability (HTS), and the engine operating time. This condition, if not corrected, could result in an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Alert Service Bulletin (ASB) No. A319 79 4802, dated June 21, 2005, that describes procedures for replacing the O-ring on the check valve piston of the lubrication unit. The DGAC classified this alert service bulletin as mandatory and issued AD No. F–2005–122, dated July 20, 2005, in order to ensure the airworthiness of these Turbomeca S.A. Arrius 2F turboshaft engines in France.

Bilateral Airworthiness Agreement

This turboshaft engine model is manufactured in France, and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca S.A. Arrius 2F turboshaft engines of the same type design. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter. This AD requires replacing the O-ring on the check valve piston in the lubrication unit at the following intervals:

- For engines that use HTS or an unknown class oil, within 300 hours time-since-new (TSN) or 50 hours after the effective date of this AD, whichever is later.
- For engines that use STD class oil, within 450 hours TSN or 50 hours after the effective date of this AD, whichever is later.
- Thereafter, replace the O-ring within 300 hours time-since-last replacement (TSR) on engines that use HTS class oil or 500 hours TSR on engines that use STD class oil.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 AD. Using the search function of the DMS web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 summary of the costs to comply with this AD and placed it in the AD Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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:

2005–17–17 Turbomeca S.A: Amendment 39–14238. Docket No. FAA–2005–22039; Directorate Identifier 2005–NE–33–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 12, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from a report of a forced landing of a Eurocopter EC120B helicopter. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in a forced autorotation landing and damage to the helicopter.

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.

O-Ring Replacement

(f) Replace the O-ring on the check valve piston in the lubrication unit at the intervals specified in Table 1 of this AD. Use the ''Instructions to be Incorporated,'' 2.A. through 2.C. (2) of Turbomeca Alert Service Bulletin No. A319 79 4802, dated June 21, 2005, to replace the O-ring.

TABLE 1.—COMPLIANCE TIMES FOR O-RING REPLACEMENT

If the class of oil is * * *	Then replace the O-ring by the later of * * *	Thereafter, replace the O-ring within * * *
(1) HTS or unknown	300 hours time-since-new (TSN) or 50 hours after the effective date of this AD.	300 hours time-since-last replacement (TSR).
(2) STD	450 hours TSN or 50 hours after the effective date of this AD	500 hours TSR.

Alternative Methods of Compliance

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

Related Information

(h) DGAC airworthiness directive F–2005–122, dated July 20, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Turbomeca Alert Service Bulletin No. A319 79 4802, dated June 21, 2005 to perform the replacements required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401,

Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 17, 2005.

Richard Noll,

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

[FR Doc. 05–16834 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22196; Directorate Identifier 2005–NM–170–AD; Amendment 39–14239; AD 2005–17–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes; and Model A340–541 and –642 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and Model A340–541 and –642 airplanes. This AD requires repetitively resetting the display units (DUs) for the electronic instrument system (EIS) either by switching them off and back on again or by performing a complete electrical shutdown of the airplane. This AD results from an incident in which all of the DUs for the EIS went blank simultaneously during flight. We are issuing this AD to prevent automatic reset of the DUs for the EIS during flight and consequent loss of data from the DUs, which could reduce the ability of the flightcrew to control the airplane during adverse flight conditions.

DATES: This AD becomes effective September 12, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 12, 2005.

We must receive comments on this AD by October 25, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes; and A340–541 and –642 airplanes. The DGAC advises of an incident that occurred on a Model A330 series airplane, in which all six of the liquid crystal display units (DUs) for the electronic instrument system (EIS) (which is equipped with the EIS2 software standard) went blank simultaneously during flight. The DUs recovered automatically after approximately 40 seconds. This incident was attributed to an automatic reset function of the DUs. (After the DUs have been continuously powered for more than 6 days, an internal timer automatically resets them.) This condition, if not corrected, could result in loss of data from the DUs, which could reduce the ability of the flightcrew to control the airplane during adverse flight conditions.

Relevant Service Information

Airbus has issued All Operator Telexes (AOTs) A330–31A3092 (for Model A330–200 and –300 series airplanes), A340–31A4102 (for Model A340–200 and –300 series airplanes), and A340–31A5023 (for Model A340–541 and –642 airplanes), all dated August 1, 2005. The AOTs are effective for airplanes of the identified models on which the EIS is equipped with the EIS2 software standard, version L4–1 or L–5. The AOTs describe procedures for resetting the DUs for the EIS by switching them off, waiting 5 seconds or longer, then switching the DUs back on again. The DGAC mandated the AOTs and issued French emergency airworthiness directive UF–2005–150, dated August 10, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent automatic reset of the DUs for the EIS during flight and consequent loss of data from the DUs, which could reduce the ability of the flightcrew to control the airplane during adverse flight conditions. This AD requires repetitively resetting the DUs for the EIS either by accomplishing the actions specified in the AOTs described previously, or by performing a complete electrical shutdown of the airplane. We have determined that switching the DUs off and back on again may be properly performed by flight deck crew (or by certificated maintenance personnel) because this action does not require tools, precision measuring equipment, training, or pilot logbook endorsements, or the use of or reference to technical data that are not contained in the body of the AD.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this

AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–22196; Directorate Identifier 2005–NM–170–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–18 Airbus: Amendment 39–14239. Docket No. FAA–2005–22196; Directorate Identifier 2005–NM–170–AD.

Effective Date

(a) This AD becomes effective September 12, 2005.

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 A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes; certificated in any category; on which one of the Airbus Electronic Instrument System (EIS) 2 software versions listed in Table 1 of this AD is installed.

TABLE 1.—APPLICABILITY

EIS 2 software version	Installed by this Airbus modification in production	Or installed by one of these Airbus service bulletins in service
L4–1	51153	A330–31–3056, A330–31–3057, or A340–31–5001.
L5	51974	A330–31–3056, A330–31–3069, A330–31–4087, or A340–31–5012.

Unsafe Condition

(d) This AD results from an incident in which all of the display units (DUs) for the EIS went blank simultaneously during flight. The FAA is issuing this AD to prevent automatic reset of the DUs for the EIS during flight and consequent loss of data from the DUs, which could reduce the ability of the flightcrew to control the airplane during adverse flight conditions.

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.

Resetting the DUs for the EIS

(f) Within 2 days after the effective date of this AD, or within 4 days after the last reset of the DUs for the EIS or complete electrical shutdown of the airplane, whichever is first: Reset the DUs for the EIS by doing the actions in either paragraph (f)(1) or (f)(2) of this AD. Thereafter, do the actions in paragraph (f)(1) or (f)(2) of this AD at intervals not to exceed 4 days.

(1) Switch off each DU for the EIS, wait 5 seconds or longer, and switch the DU back on again, in accordance with Airbus All Operator Telex (AOT) A330–31A3092 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes), A340–31A4102 (for A340–211, –212, –213, –311, –312, and –313 airplanes), or A340–31A5023 (for Model A340–541 and –642 airplanes), all dated August 1, 2005, as applicable. This action may be performed by the flight deck crew or by certificated maintenance personnel.

(2) Perform a complete electrical shutdown of the airplane.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) French emergency airworthiness directive UF–2005–150, dated August 10, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use the documents listed in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at http://dms.dot.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Airbus all operators telex	Date
A330–31A3092	August 1, 2005.
A340–31A4102	August 1, 2005.
A340–31A5023	August 1, 2005.

Issued in Renton, Washington, on August 18, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16896 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21924; Directorate Identifier 2005–NE–30–AD; Amendment 39–14236; AD 2005–17–15]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arrius 2F Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Arrius 2F turboshaft engines. This AD requires a one-time removal and inspection of the fuel filter-holder assembly to determine that the fuel control unit (FCU) filter is dimensionally correct. The AD also requires updating the Engine Maintenance Manuals to include a dimensional check of the fuel filter-holder assembly every time the FCU filter element is removed from the fuel filter-holder assembly. This AD results from reports of restricted fuel flow caused by a dimensionally incorrect FCU filter. Ground run testing may not detect the fuel flow limitation. We are issuing this AD to detect a dimensionally incorrect FCU filter that could lead to an undetected limitation of fuel flow, limiting the maximum power available in-flight, which could result in the inability to continue safe flight, avoid obstacles or land safely.

DATES: Effective September 12, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 12, 2005.

We must receive any comments on this AD by October 25, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition might exist on Turbomeca S.A. Arrius 2F turboshaft engines. The DGAC advised us of reports of restricted fuel flow caused by a dimensionally incorrect FCU filters. Ground run testing may not detect the fuel flow limitation and, therefore, it could go undetected until maximum power is needed for certain flight conditions. We are issuing this AD to detect a dimensionally incorrect FCU filter that could lead to an undetected limitation of fuel flow, limiting the maximum power available in-flight, which could result in the inability to continue safe flight, avoid obstacles or land safely.

Relevant Service Information

We have reviewed and approved the technical contents of Turbomeca Mandatory Alert Service Bulletin No. A319 73 4823, dated May 11, 2005, that describes procedures for checking the correct position of the FCU fuel filter. The DGAC classified this service bulletin as mandatory and issued AD No. F–2005–088, in order to ensure the airworthiness of these engines in France.

Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the Direction General De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified us that an unsafe condition might exist on certain Turbomeca S.A. Arrius 2F turboshaft engines. Under this bilateral airworthiness agreement, the DGAC kept the FAA informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Turbomeca S.A. Arrius 2F turboshaft engines of the same type design. We are issuing this AD to detect incorrect positioning of the FCU filter that could lead to an undetected limitation of fuel flow, limiting the

maximum power available in-flight, which could result in the inability to continue safe flight, avoid obstacles or land safely. This AD requires a one-time removal and inspection of the fuel filter-holder assembly to determine that the fuel control unit (FCU) filter is in the correct position. The AD also requires that the Engine Maintenance Manuals be updated to include this inspection every time the FCU filter is removed from the fuel filter-holder assembly. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2005–21924; Directorate Identifier 2005–NE–30–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 AD. Using the search function of the DMS web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2005–NE–30–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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:

2005–17–15 Turbomeca S.A: Amendment 39–14236. Docket No. FAA–2005–21924; Directorate Identifier 2005–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 12, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2F turboshaft engines. These engines are installed on, but not limited to, Eurocopter EC120 helicopters.

Unsafe Condition

(d) This AD results from incorrect positioning of the FCU filter that could limit the fuel flow downstream of the filter. We are issuing this AD to detect incorrect positioning of the FCU filter that could lead to an undetected limitation of fuel flow, limiting the maximum power available in-flight, which could result in the inability to continue safe flight, avoid obstacles or land safely.

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.

Check Position of Fuel Control Unit (FCU) Fuel Filter

(f) Within 25 engine-operating-hours after the effective date of this AD, remove the fuel filter-holder assembly and check that the FCU fuel filter is in the correct position using Paragraph 2 of Turbomeca Mandatory Alert Service Bulletin No. A319 73 4823, dated May 11, 2005.

(g) Within 30 days, revise your engine maintenance manual to include a dimensional check to ensure the correct position of the FCU filter after every installation of the fuel filter element into the fuel filter-holder assembly. The latest revision of the Arrius 2F maintenance manual includes the dimensional check in Sub-Task 73–23–06–901–002 paragraph (2)(e).

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) DGAC airworthiness directive No. F–2005–088, dated June 8, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Turbomeca Mandatory Alert Service Bulletin No. A319 73 4823, dated May 11, 2005, to perform the check required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on August 17, 2005.

Richard Noll,

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

[FR Doc. 05–16902 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19929; Directorate Identifier 2004–NE–15–AD; Amendment 39–14237; AD 2005–17–16]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines. This AD requires removing affected rotating parts overhauled by a certain repair vendor, and inspecting the parts as applicable. This AD results from reports that certain JT8D critical life-limited rotating parts have been returned to service with cracks, corrosion pitting, or dimensions outside of manual limits. We are issuing this AD to prevent failure of critical life-limited rotating engine parts which could result in an uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective September 30, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 30, 2005.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines. We published the proposed AD in the **Federal Register** on December 30, 2004 (69 FR 78359). That action proposed to require removing affected rotating parts overhauled by a certain repair vendor, and inspecting or replacing the parts as applicable.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

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

Request To Remove Rear Compressor Rear Hub From List of Affected Parts

One commenter requests that we remove the rear compressor rear hub from the list of affected parts. The commenter states that the part is a nickel alloy similar to the 13th stage disk and there is no cracking or corrosion associated with it. In addition, the rear compressor rear hub is not a life-limited part, and the serial numbers are not readily available. As a result, the commenter feels the proposed AD would force operators to inspect all parts, not just the listed serial number parts.

We agree. We have removed it from this AD.

Include All Parts Improperly Processed by the Repair Vendor

One commenter asks that this AD include all parts improperly processed by a certain repair vendor, not just the high-pressure compressor.

We do not agree. The proposed AD addresses those parts that pose a safety threat. All other parts either present no known safety threat, or are already addressed through other applicable ADs and field notifications. If we decide that further AD action is necessary to address other parts, we may issue a separate AD at that time.

Request To Clarify ''Shop Visit''

One commenter asks that we clarify the definition of ''shop visit'' contained in the AD. The commenter feels that an operator could interpret a shop visit as when an airplane upon which an affected engine is installed, goes into a hangar.

We agree. We included the following definition in the AD: ''A shop visit is defined as an engine removal where engine maintenance entails separation of pairs of major engine flanges or the removal of a disk, hub or spool at a maintenance facility, regardless of the scheduled maintenance action or the reason for engine removal.''

Request To Inspect Rear Compressor Front and Rear Compressor Rear Hubs When They Are Accessible

One commenter asks that we not place time restrictions on operators to inspect rear compressor front and rear compressor rear hubs and instead inspect them when they are accessible. Because they aren't life-limited parts, the hubs are not tracked by serial

numbers. The commenter believes the proposed AD would require operators to inspect every JT8D before March 31, 2008. Those inspections would force early removal of many engines. We partially agree. Table 1 of this AD lists all life-limited rear compressor front hubs, and operators must inspect them by the March 31, 2008, deadline. Table 2 of this AD lists all rear compressor front hubs that are non-life limited. Operators must inspect them at the next accessibility. We removed the rear compressor rear hubs from this AD, based on a previous comment.

Compliance Date

One commenter asks us to explain how we determined the March 31, 2008 compliance date. The commenter states that it is unclear how we selected that compliance date since corrosion inspection ADs 2003–16–05 and 2003–12–07, as well as PW ASBs A6431 and A6435, designate July 18, 2011, as a compliance date.

We evaluated the results of a risk analysis based on inspection data obtained from a sample of parts repaired by the repair vendor. That analysis demonstrated a greater risk of failure if the parts were only inspected for corrosion and not for cracking as mandated in ADs 2003–16–05 and 2003–12–07. Based on that risk analysis, we set March 31, 2008, as the date by which operators must complete the inspections.

Use of Certain Parts as Serviceable Parts

One commenter recommends inspecting all parts listed in Tables 1 and 2 that have zero cycles-in-service since May 14, 2001, using PW ASB A6442 and made available for use as spare parts.

We do not agree. Parts listed in Table 1 were subjected to shot peening that could mask surface cracks. Parts listed in Table 2 were not. If the parts in Table 1 were cracked and, thereafter, shot peened, the cracks will reopen once operated in an engine, a significant factor in our risk analysis and the resulting compliance schedule in the proposed AD. Since there is no effective inspection to detect these cracks, operators may use only parts that have been in service. This is consistent with the manufacturer's disposition instructions in ASB A6442 that state, ''All compressor disks and hubs listed in Table 1 that are not installed in an engine MUST be scrapped.''

Definition of Installed Part

One commenter requests that the definition of installed part be included in this AD to prevent ''operation of a part physically installed in a module.''

We do not agree. A definition of ''installed part'' is unnecessary because this proposed AD prohibits all parts with zero cycles-in-service that are listed in Table 1 from entering service, regardless of whether they are installed or not. However, we added a new paragraph (h) to prevent installing any engine that has an affected disk or hub that has zero cycles-in-service after May 14, 2001, and recodified the subsequent paragraphs.

Operators' Cost

One commenter asks that we explain the cost to operators, suggesting that we evaluate the cost as if every part fails inspection. The commenter states that the current market value for all affected parts is $14,413,020, and the cost to disassemble, inspect and reassemble engines outside of regularly scheduled maintenance is $1,766,440.

We disagree. We still consider our evaluation of cost as noted in the NPRM valid. We do not expect that every part will fail the inspection, although we estimate that the number will be substantial. In addition, we did not include the full cost of every disk in the economic analysis if the disks must be replaced before they reach their certified life, a normal operating expense. Accordingly, we didn't change the Costs to Comply.

Add Spare Parts to Paragraph (g)

One commenter asks that we add a sentence to Paragraph (g) that reads ''This includes all parts on the shelf that have not been used.''

We do not agree. This AD is clear as written. We have not added the sentence.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

These actions are interim actions and we might take further rulemaking action in the future.

Costs of Compliance

We estimate that this AD will affect about 632 JT8D engines installed on airplanes of U.S. registry. We estimate that 158 engines will require access to the high-pressure compressor outside of regularly scheduled maintenance, and will require 66 work hours per engine. The high pressure compressor section of the remaining 474 engines will be inspected during regularly scheduled maintenance, and will not require additional labor costs to inspect. The average labor rate is $65 per work hour. We estimate that half of the parts presently installed will require replacement, at a cost of approximately $6,730,800. Based on this information, we estimate the total cost of the AD to U.S. operators to be $7,398,620.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–16 Pratt & Whitney: Amendment 39–14237. Docket No. FAA–2004–19929; Directorate Identifier 2004–NE–15–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, –17AR, –209, –217, –217A, –217C, and –219 turbofan engines. These engines are installed on, but not limited to, Boeing 727 and 737 series, and McDonnell Douglas DC–9 series and MD–80 series airplanes.

Unsafe Condition

(d) This AD results from reports that certain JT8D critical life-limited rotating parts have been returned to service with cracks, corrosion pitting, or dimensions outside of manual limits. We are issuing this AD to prevent failure of critical life-limited rotating engine parts, which could result in an uncontained engine failure and damage to 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.

Inspect Parts

(f) Remove all coating from the disks and hubs identified in Tables 1 and 2 of this AD and visually, dimensionally, and nondestructively inspect the parts using the inspection criteria listed in the Accomplishment Instructions portion of PW Alert Service Bulletin (ASB) No. JT8D A6442, dated April 4, 2003:

(1) At the next shop visit after the effective date of this AD, but no later than March 31, 2008, for all parts listed in Table 1, and,

(2) At next part accessibility for all parts listed in Table 2.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS

SN	P/N	Description
B207AA0072	774407	DISK—COMPRESSOR, 7TH STAGE.
B207AA0185	774407	DISK—COMPRESSOR, 7TH STAGE.
B207AA0265	774407	DISK—COMPRESSOR, 7TH STAGE.
B207AA0307	774407	DISK—COMPRESSOR, 7TH STAGE
B207AA0390	774407	DISK—COMPRESSOR, 7TH STAGE.
B207AA0602	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAH2848	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAJ5251	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAJ8447	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAJ8508	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAK1906	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAK5073	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAK6015	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAK6588	774407	DISK—COMPRESSOR, 7TH STAGE.
G83339	774407	DISK—COMPRESSOR, 7TH STAGE.
H29725	774407	DISK—COMPRESSOR, 7TH STAGE.
J39323	774407	DISK—COMPRESSOR, 7TH STAGE.
J66757	774407	DISK—COMPRESSOR, 7TH STAGE.
J93566	774407	DISK—COMPRESSOR, 7TH STAGE.
K72131	774407	DISK—COMPRESSOR, 7TH STAGE.
L24089	774407	DISK—COMPRESSOR, 7TH STAGE.
M15351	774407	DISK—COMPRESSOR, 7TH STAGE.
M78744	774407	DISK—COMPRESSOR, 7TH STAGE.
M88080	774407	DISK—COMPRESSOR, 7TH STAGE.
N04693	774407	DISK—COMPRESSOR, 7TH STAGE.
N24126	774407	DISK—COMPRESSOR, 7TH STAGE.
N37768	774407	DISK—COMPRESSOR, 7TH STAGE.
N70373	774407	DISK—COMPRESSOR, 7TH STAGE.
N88332	774407	DISK—COMPRESSOR, 7TH STAGE.
P14777	774407	DISK—COMPRESSOR, 7TH STAGE.
P14853	774407	DISK—COMPRESSOR, 7TH STAGE.
P54407	774407	DISK—COMPRESSOR, 7TH STAGE.
P60411	774407	DISK—COMPRESSOR, 7TH STAGE.
R02963	774407	DISK—COMPRESSOR, 7TH STAGE.
R02983	774407	DISK—COMPRESSOR, 7TH STAGE.
R03090	774407	DISK—COMPRESSOR, 7TH STAGE.
R12397	774407	DISK—COMPRESSOR, 7TH STAGE.
R12398	774407	DISK—COMPRESSOR, 7TH STAGE.
R12414	774407	DISK—COMPRESSOR, 7TH STAGE.
R12506	774407	DISK—COMPRESSOR, 7TH STAGE.
R12527	774407	DISK—COMPRESSOR, 7TH STAGE.
R19285	774407	DISK—COMPRESSOR, 7TH STAGE.
R19423	774407	DISK—COMPRESSOR, 7TH STAGE.
R19466	774407	DISK—COMPRESSOR, 7TH STAGE.
R31288	774407	DISK—COMPRESSOR, 7TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
R31356	774407	DISK—COMPRESSOR, 7TH STAGE.
R37429	774407	DISK—COMPRESSOR, 7TH STAGE.
R57637	774407	DISK—COMPRESSOR, 7TH STAGE.
R57707	774407	DISK—COMPRESSOR, 7TH STAGE.
R72163	774407	DISK—COMPRESSOR, 7TH STAGE.
R81448	774407	DISK—COMPRESSOR, 7TH STAGE.
R81455	774407	DISK—COMPRESSOR, 7TH STAGE.
R90915	774407	DISK—COMPRESSOR, 7TH STAGE.
S05602	774407	DISK—COMPRESSOR, 7TH STAGE.
S13909	774407	DISK—COMPRESSOR, 7TH STAGE.
S13945	774407	DISK—COMPRESSOR, 7TH STAGE.
S14021	774407	DISK—COMPRESSOR, 7TH STAGE.
S14057	774407	DISK—COMPRESSOR, 7TH STAGE.
S14083	774407	DISK—COMPRESSOR, 7TH STAGE.
S14112	774407	DISK—COMPRESSOR, 7TH STAGE.
S36685	774407	DISK—COMPRESSOR, 7TH STAGE.
S36696	774407	DISK—COMPRESSOR, 7TH STAGE.
S36760	774407	DISK—COMPRESSOR, 7TH STAGE.
S36882	774407	DISK—COMPRESSOR, 7TH STAGE.
S37210	774407	DISK—COMPRESSOR, 7TH STAGE.
S37330	774407	DISK—COMPRESSOR, 7TH STAGE.
S37334	774407	DISK—COMPRESSOR, 7TH STAGE.
S37351	774407	DISK—COMPRESSOR, 7TH STAGE.
S37384	774407	DISK—COMPRESSOR, 7TH STAGE.
T04464	774407	DISK—COMPRESSOR, 7TH STAGE.
T04520	774407	DISK—COMPRESSOR, 7TH STAGE.
T04635	774407	DISK—COMPRESSOR, 7TH STAGE.
T04674	774407	DISK—COMPRESSOR, 7TH STAGE.
T04725	774407	DISK—COMPRESSOR, 7TH STAGE.
T04770	774407	DISK—COMPRESSOR, 7TH STAGE.
T04778	774407	DISK—COMPRESSOR, 7TH STAGE.
T04841	774407	DISK—COMPRESSOR, 7TH STAGE.
T04965	774407	DISK—COMPRESSOR, 7TH STAGE.
T05018	774407	DISK—COMPRESSOR, 7TH STAGE.
BENCAP1838	815607	DISK—COMPRESSOR, 7TH STAGE.
BENCAP5647	815607	DISK—COMPRESSOR, 7TH STAGE.
B207AA0127	5006007–01	DISK—COMPRESSOR, 7TH STAGE.
BENCAK9663	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAL3896	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAL5171	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAM1583	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAM3953	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAM8359	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAM8385	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAN5764	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
BENCAN5857	5006007–02	DISK—COMPRESSOR, 7TH STAGE.
2B7763	738308	DISK—COMPRESSOR, 8TH STAGE.
B208AA0063	748608	DISK—COMPRESSOR, 8TH STAGE.
B208AA0075	748608	DISK—COMPRESSOR, 8TH STAGE.
BENCAM3705	748608	DISK—COMPRESSOR, 8TH STAGE.
BENCAP0649	748608	DISK—COMPRESSOR, 8TH STAGE.
BENCAP1082	748608	DISK—COMPRESSOR, 8TH STAGE.
G62633	748608	DISK—COMPRESSOR, 8TH STAGE.
H64242	748608	DISK—COMPRESSOR, 8TH STAGE.
H64541	748608	DISK—COMPRESSOR, 8TH STAGE.
J27080	748608	DISK—COMPRESSOR, 8TH STAGE.
M54597	748608	DISK—COMPRESSOR, 8TH STAGE.
N84400	748608	DISK—COMPRESSOR, 8TH STAGE.
P26132	748608	DISK—COMPRESSOR, 8TH STAGE.
P28454	748608	DISK—COMPRESSOR, 8TH STAGE.
P28525	748608	DISK—COMPRESSOR, 8TH STAGE.
P28529	748608	DISK—COMPRESSOR, 8TH STAGE.
P28610	748608	DISK—COMPRESSOR, 8TH STAGE.
R18442	748608	DISK—COMPRESSOR, 8TH STAGE.
R44993	748608	DISK—COMPRESSOR, 8TH STAGE.
R45505	748608	DISK—COMPRESSOR, 8TH STAGE.
R74513	748608	DISK—COMPRESSOR, 8TH STAGE.
S01111	748608	DISK—COMPRESSOR, 8TH STAGE.
S19131	748608	DISK—COMPRESSOR, 8TH STAGE.
S50698	748608	DISK—COMPRESSOR, 8TH STAGE.
S50793	748608	DISK—COMPRESSOR, 8TH STAGE.
S78019	748608	DISK—COMPRESSOR, 8TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
BENCAP4498	815608	DISK—COMPRESSOR, 8TH STAGE.
BENCAP4505	815608	DISK—COMPRESSOR, 8TH STAGE.
BENCAR1361	815608	DISK—COMPRESSOR, 8TH STAGE.
BENCAR1363	815608	DISK—COMPRESSOR, 8TH STAGE.
BENCAR1367	815608	DISK—COMPRESSOR, 8TH STAGE.
R91483	5005808–01	DISK—COMPRESSOR, 8TH STAGE.
T03355	5005808–01	DISK—COMPRESSOR, 8TH STAGE.
M33420	787008	HUB—REAR COMPRESSOR, FRONT.
N06209	787008	HUB—REAR COMPRESSOR, FRONT.
N33004	787008	HUB—REAR COMPRESSOR, FRONT.
N33349	787008	HUB—REAR COMPRESSOR, FRONT.
N33420	787008	HUB—REAR COMPRESSOR, FRONT.
N34154	787008	HUB—REAR COMPRESSOR, FRONT.
N90416	787008	HUB—REAR COMPRESSOR, FRONT.
N90658	787008	HUB—REAR COMPRESSOR, FRONT.
B228AA0190	787208	HUB—REAR COMPRESSOR, FRONT.
B228AA0194	787208	HUB—REAR COMPRESSOR, FRONT.
B228AA1021	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAH0967	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAH0969	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAK0069	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAK8767	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAL2504	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAM2701	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAN0012	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAN1226	787208	HUB—REAR COMPRESSOR, FRONT.
BENCAN3008	787208	HUB—REAR COMPRESSOR, FRONT.
P43696	787208	HUB—REAR COMPRESSOR, FRONT.
P43934	787208	HUB—REAR COMPRESSOR, FRONT.
P43948	787208	HUB—REAR COMPRESSOR, FRONT.
P44411	787208	HUB—REAR COMPRESSOR, FRONT.
P45017	787208	HUB—REAR COMPRESSOR, FRONT.
P45277	787208	HUB—REAR COMPRESSOR, FRONT.
P45459	787208	HUB—REAR COMPRESSOR, FRONT.
P45544	787208	HUB—REAR COMPRESSOR, FRONT.
R23166	787208	HUB—REAR COMPRESSOR, FRONT.
R23187	787208	HUB—REAR COMPRESSOR, FRONT.
R23277	787208	HUB—REAR COMPRESSOR, FRONT.
R23628	787208	HUB—REAR COMPRESSOR, FRONT.
R23806	787208	HUB—REAR COMPRESSOR, FRONT.
R24209	787208	HUB—REAR COMPRESSOR, FRONT.
R24598	787208	HUB—REAR COMPRESSOR, FRONT.
R24900	787208	HUB—REAR COMPRESSOR, FRONT.
R91415	787208	HUB—REAR COMPRESSOR, FRONT.
R91746	787208	HUB—REAR COMPRESSOR, FRONT.
R92224	787208	HUB—REAR COMPRESSOR, FRONT.
S07564	787208	HUB—REAR COMPRESSOR, FRONT.
S07655	787208	HUB—REAR COMPRESSOR, FRONT.
S07706	787208	HUB—REAR COMPRESSOR, FRONT.
S39160	787208	HUB—REAR COMPRESSOR, FRONT.
S39199	787208	HUB—REAR COMPRESSOR, FRONT.
S39338	787208	HUB—REAR COMPRESSOR, FRONT.
S39741	787208	HUB—REAR COMPRESSOR, FRONT.
S39839	787208	HUB—REAR COMPRESSOR, FRONT.
S40023	787208	HUB—REAR COMPRESSOR, FRONT.
S40043	787208	HUB—REAR COMPRESSOR, FRONT.
B228AA0261	792038	HUB—REAR COMPRESSOR, 8TH STAGE.
B228AA0566	792038	HUB—REAR COMPRESSOR, 8TH STAGE.
BENCAK8279	792038	HUB—REAR COMPRESSOR, 8TH STAGE.
M41870	792038	HUB—REAR COMPRESSOR, 8TH STAGE.
N89470	797938	HUB—REAR COMPRESSOR, 8TH STAGE.
BENCAP5753	815708	HUB—REAR COMPRESSOR, 8TH STAGE.
BENCAR5454	815708	HUB—REAR COMPRESSOR, 8TH STAGE.
BENCAR5458	815708	HUB—REAR COMPRESSOR, 8TH STAGE.
BENCAR5500	815708	HUB—REAR COMPRESSOR, 8TH STAGE.
BENCAR0387	815808	HUB—REAR COMPRESSOR, 8TH STAGE.
G79931	701509	DISK—COMPRESSOR, 9TH STAGE.
H12008	701509	DISK—COMPRESSOR, 9TH STAGE.
H85014	701509	DISK—COMPRESSOR, 9TH STAGE.
J24173	701509	DISK—COMPRESSOR, 9TH STAGE.
J89012	701509	DISK—COMPRESSOR, 9TH STAGE.
L31210	701509	DISK—COMPRESSOR, 9TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
M84244	701509	DISK—COMPRESSOR, 9TH STAGE.
M84648	701509	DISK—COMPRESSOR, 9TH STAGE.
N03018	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0003	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0021	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0108	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0110	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0120	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0251	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0254	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0339	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0465	701509	DISK—COMPRESSOR, 9TH STAGE.
N209AA0613	701509	DISK—COMPRESSOR, 9TH STAGE.
N41318	701509	DISK—COMPRESSOR, 9TH STAGE.
N97641	701509	DISK—COMPRESSOR, 9TH STAGE.
N97777	701509	DISK—COMPRESSOR, 9TH STAGE.
N98300	701509	DISK—COMPRESSOR, 9TH STAGE.
N98342	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0026	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0145	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0196	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0311	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0558	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0686	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH0808	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH1372	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH1462	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH1787	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH2157	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH2310	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH2618	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH2744	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH2754	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH2812	701509	DISK—COMPRESSOR, 9TH STAGE.
NENCAH3172	701509	DISK—COMPRESSOR, 9TH STAGE.
P11727	701509	DISK—COMPRESSOR, 9TH STAGE.
P51543	701509	DISK—COMPRESSOR, 9TH STAGE.
P51573	701509	DISK—COMPRESSOR, 9TH STAGE.
P51959	701509	DISK—COMPRESSOR, 9TH STAGE.
P52941	701509	DISK—COMPRESSOR, 9TH STAGE.
P98658	701509	DISK—COMPRESSOR, 9TH STAGE.
P98768	701509	DISK—COMPRESSOR, 9TH STAGE.
R17612	701509	DISK—COMPRESSOR, 9TH STAGE.
R17753	701509	DISK—COMPRESSOR, 9TH STAGE.
R17770	701509	DISK—COMPRESSOR, 9TH STAGE.
R18740	701509	DISK—COMPRESSOR, 9TH STAGE.
R19009	701509	DISK—COMPRESSOR, 9TH STAGE.
R19013	701509	DISK—COMPRESSOR, 9TH STAGE.
R45437	701509	DISK—COMPRESSOR, 9TH STAGE.
R45449	701509	DISK—COMPRESSOR, 9TH STAGE.
R45875	701509	DISK—COMPRESSOR, 9TH STAGE.
R46726	701509	DISK—COMPRESSOR, 9TH STAGE.
R72945	701509	DISK—COMPRESSOR, 9TH STAGE.
R72960	701509	DISK—COMPRESSOR, 9TH STAGE.
R73803	701509	DISK—COMPRESSOR, 9TH STAGE.
R73835	701509	DISK—COMPRESSOR, 9TH STAGE.
R73941	701509	DISK—COMPRESSOR, 9TH STAGE.
S00757	701509	DISK—COMPRESSOR, 9TH STAGE.
S00963	701509	DISK—COMPRESSOR, 9TH STAGE.
S18823	701509	DISK—COMPRESSOR, 9TH STAGE.
S18838	701509	DISK—COMPRESSOR, 9TH STAGE.
S18955	701509	DISK—COMPRESSOR, 9TH STAGE.
S50282	701509	DISK—COMPRESSOR, 9TH STAGE.
S50317	701509	DISK—COMPRESSOR, 9TH STAGE.
S50434	701509	DISK—COMPRESSOR, 9TH STAGE.
S70079	701509	DISK—COMPRESSOR, 9TH STAGE.
S77569	701509	DISK—COMPRESSOR, 9TH STAGE.
S77744	701509	DISK—COMPRESSOR, 9TH STAGE.
S77764	701509	DISK—COMPRESSOR, 9TH STAGE.
T18831	701509	DISK—COMPRESSOR, 9TH STAGE.
T27504	701509	DISK—COMPRESSOR, 9TH STAGE.
T27506	701509	DISK—COMPRESSOR, 9TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
T27542	701509	DISK—COMPRESSOR, 9TH STAGE.
N41854	772509	DISK—COMPRESSOR, 9TH STAGE.
B209AA0643	798509	DISK—COMPRESSOR, 9TH STAGE.
BENCAK4407	798509	DISK—COMPRESSOR, 9TH STAGE.
BENCAK5293	798509	DISK—COMPRESSOR, 9TH STAGE.
BENCAK9176	798509	DISK—COMPRESSOR, 9TH STAGE.
S79381	798509	DISK—COMPRESSOR, 9TH STAGE.
BENCAP5919	815609	DISK—COMPRESSOR, 9TH STAGE.
BENCAP8126	815609	DISK—COMPRESSOR, 9TH STAGE.
BENCAP7181	815709	DISK—COMPRESSOR, 9TH STAGE.
1A9814	701410	DISK—COMPRESSOR, 10TH STAGE.
H18187	701410	DISK—COMPRESSOR, 10TH STAGE.
B210AA0149	772510	DISK—COMPRESSOR, 10TH STAGE.
B210AA0640	772510	DISK—COMPRESSOR, 10TH STAGE.
B210AA0909	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAH0262	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAH2166	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAH2273	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAH3784	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAH4152	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAH7481	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAJ9921	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAK0265	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAK0436	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAK6513	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAL1628	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAL1639	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAL3371	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAL6369	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAM1250	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAM3804	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAM3921	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAM4098	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAM9868	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAM9908	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAN1150	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAN7151	772510	DISK—COMPRESSOR, 10TH STAGE.
H77954	772510	DISK—COMPRESSOR, 10TH STAGE.
J70438	772510	DISK—COMPRESSOR, 10TH STAGE.
K35562	772510	DISK—COMPRESSOR, 10TH STAGE.
K67440	772510	DISK—COMPRESSOR, 10TH STAGE.
M61663	772510	DISK—COMPRESSOR, 10TH STAGE.
M73696	772510	DISK—COMPRESSOR, 10TH STAGE.
M73717	772510	DISK—COMPRESSOR, 10TH STAGE.
M73921	772510	DISK—COMPRESSOR, 10TH STAGE.
N02011	772510	DISK—COMPRESSOR, 10TH STAGE.
N22418	772510	DISK—COMPRESSOR, 10TH STAGE.
N80149	772510	DISK—COMPRESSOR, 10TH STAGE.
N80717	772510	DISK—COMPRESSOR, 10TH STAGE.
N97525	772510	DISK—COMPRESSOR, 10TH STAGE.
N98121	772510	DISK—COMPRESSOR, 10TH STAGE.
N98502	772510	DISK—COMPRESSOR, 10TH STAGE.
P51840	772510	DISK—COMPRESSOR, 10TH STAGE.
P51884	772510	DISK—COMPRESSOR, 10TH STAGE.
P52230	772510	DISK—COMPRESSOR, 10TH STAGE.
P52692	772510	DISK—COMPRESSOR, 10TH STAGE.
P53030	772510	DISK—COMPRESSOR, 10TH STAGE.
P98173	772510	DISK—COMPRESSOR, 10TH STAGE.
R18125	772510	DISK—COMPRESSOR, 10TH STAGE.
R18126	772510	DISK—COMPRESSOR, 10TH STAGE.
R18219	772510	DISK—COMPRESSOR, 10TH STAGE.
R45551	772510	DISK—COMPRESSOR, 10TH STAGE.
R45884	772510	DISK—COMPRESSOR, 10TH STAGE.
R46585	772510	DISK—COMPRESSOR, 10TH STAGE.
R72889	772510	DISK—COMPRESSOR, 10TH STAGE.
R74037	772510	DISK—COMPRESSOR, 10TH STAGE.
S01333	772510	DISK—COMPRESSOR, 10TH STAGE.
S01381	772510	DISK—COMPRESSOR, 10TH STAGE.
S19348	772510	DISK—COMPRESSOR, 10TH STAGE.
S19418	772510	DISK—COMPRESSOR, 10TH STAGE.
S19446	772510	DISK—COMPRESSOR, 10TH STAGE.
S19563	772510	DISK—COMPRESSOR, 10TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
S50885	772510	DISK—COMPRESSOR, 10TH STAGE.
S51060	772510	DISK—COMPRESSOR, 10TH STAGE.
S51077	772510	DISK—COMPRESSOR, 10TH STAGE.
S70198	772510	DISK—COMPRESSOR, 10TH STAGE.
S70221	772510	DISK—COMPRESSOR, 10TH STAGE.
S78390	772510	DISK—COMPRESSOR, 10TH STAGE.
S78774	772510	DISK—COMPRESSOR, 10TH STAGE.
T19111	772510	DISK—COMPRESSOR, 10TH STAGE.
T19185	772510	DISK—COMPRESSOR, 10TH STAGE.
T28090	772510	DISK—COMPRESSOR, 10TH STAGE.
T28130	772510	DISK—COMPRESSOR, 10TH STAGE.
T28230	772510	DISK—COMPRESSOR, 10TH STAGE.
BENCAP3554	815610	DISK—COMPRESSOR, 10TH STAGE.
BENCAP8866	815610	DISK—COMPRESSOR, 10TH STAGE.
BENCAP9500	815610	DISK—COMPRESSOR, 10TH STAGE.
BENCAR3177	815610	DISK—COMPRESSOR, 10TH STAGE.
2A0326	701411	DISK—COMPRESSOR, 11TH STAGE.
8Y2537	701411	DISK—COMPRESSOR, 11TH STAGE.
B211AA0141	772511	DISK—COMPRESSOR, 11TH STAGE.
B211AA0611	772511	DISK—COMPRESSOR, 11TH STAGE.
B211AA0838	772511	DISK—COMPRESSOR, 11TH STAGE.
B211AA0934	772511	DISK—COMPRESSOR, 11TH STAGE.
B211AA1235	772511	DISK—COMPRESSOR, 11TH STAGE.
B211AA1315	772511	DISK—COMPRESSOR, 11TH STAGE.
B211AA1357	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAH0266	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAH8830	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAK0480	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAK7394	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAL2738	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAM2075	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAM7493	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAM7745	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAM7814	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAN3212	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAN7762	772511	DISK—COMPRESSOR, 11TH STAGE.
H58198	772511	DISK—COMPRESSOR, 11TH STAGE.
J24723	772511	DISK—COMPRESSOR, 11TH STAGE.
L55201	772511	DISK—COMPRESSOR, 11TH STAGE.
M10783	772511	DISK—COMPRESSOR, 11TH STAGE.
M40303	772511	DISK—COMPRESSOR, 11TH STAGE.
M61351	772511	DISK—COMPRESSOR, 11TH STAGE.
M61382	772511	DISK—COMPRESSOR, 11TH STAGE.
M62071	772511	DISK—COMPRESSOR, 11TH STAGE.
M73309	772511	DISK—COMPRESSOR, 11TH STAGE.
M87068	772511	DISK—COMPRESSOR, 11TH STAGE.
N03523	772511	DISK—COMPRESSOR, 11TH STAGE.
N41429	772511	DISK—COMPRESSOR, 11TH STAGE.
N97351	772511	DISK—COMPRESSOR, 11TH STAGE.
N97355	772511	DISK—COMPRESSOR, 11TH STAGE.
P03557	772511	DISK—COMPRESSOR, 11TH STAGE.
P11649	772511	DISK—COMPRESSOR, 11TH STAGE.
P51901	772511	DISK—COMPRESSOR, 11TH STAGE.
P52302	772511	DISK—COMPRESSOR, 11TH STAGE.
P52553	772511	DISK—COMPRESSOR, 11TH STAGE.
P53051	772511	DISK—COMPRESSOR, 11TH STAGE.
P66344	772511	DISK—COMPRESSOR, 11TH STAGE.
P66429	772511	DISK—COMPRESSOR, 11TH STAGE.
P76611	772511	DISK—COMPRESSOR, 11TH STAGE.
R05611	772511	DISK—COMPRESSOR, 11TH STAGE.
R18714	772511	DISK—COMPRESSOR, 11TH STAGE.
R29877	772511	DISK—COMPRESSOR, 11TH STAGE.
R29944	772511	DISK—COMPRESSOR, 11TH STAGE.
R29960	772511	DISK—COMPRESSOR, 11TH STAGE.
R30004	772511	DISK—COMPRESSOR, 11TH STAGE.
R30196	772511	DISK—COMPRESSOR, 11TH STAGE.
R30400	772511	DISK—COMPRESSOR, 11TH STAGE.
R30622	772511	DISK—COMPRESSOR, 11TH STAGE.
R30734	772511	DISK—COMPRESSOR, 11TH STAGE.
R30906	772511	DISK—COMPRESSOR, 11TH STAGE.
R44093	772511	DISK—COMPRESSOR, 11TH STAGE.
R44808	772511	DISK—COMPRESSOR, 11TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
R45420	772511	DISK—COMPRESSOR, 11TH STAGE.
R45926	772511	DISK—COMPRESSOR, 11TH STAGE.
R46487	772511	DISK—COMPRESSOR, 11TH STAGE.
S04447	772511	DISK—COMPRESSOR, 11TH STAGE.
S04609	772511	DISK—COMPRESSOR, 11TH STAGE.
S80579	772511	DISK—COMPRESSOR, 11TH STAGE.
S80718	772511	DISK—COMPRESSOR, 11TH STAGE.
S80811	772511	DISK—COMPRESSOR, 11TH STAGE.
T22392	772511	DISK—COMPRESSOR, 11TH STAGE.
T23022	772511	DISK—COMPRESSOR, 11TH STAGE.
T23028	772511	DISK—COMPRESSOR, 11TH STAGE.
T23042	772511	DISK—COMPRESSOR, 11TH STAGE.
BENCAM8030	815611	DISK—COMPRESSOR, 11TH STAGE.
BENCAP1478	815611	DISK—COMPRESSOR, 11TH STAGE.
BENCAP1525	815611	DISK—COMPRESSOR, 11TH STAGE.
BENCAP3999	815611	DISK—COMPRESSOR, 11TH STAGE.
3A7566	701412	DISK—COMPRESSOR, 12TH STAGE.
BENCAH0234	772512	DISK—COMPRESSOR, 12TH STAGE.
H58273	772512	DISK—COMPRESSOR, 12TH STAGE.
H76934	772512	DISK—COMPRESSOR, 12TH STAGE.
K04068	772512	DISK—COMPRESSOR, 12TH STAGE.
L85496	772512	DISK—COMPRESSOR, 12TH STAGE.
M09749	772512	DISK—COMPRESSOR, 12TH STAGE.
M10951	772512	DISK—COMPRESSOR, 12TH STAGE.
M49036	772512	DISK—COMPRESSOR, 12TH STAGE.
M61295	772512	DISK—COMPRESSOR, 12TH STAGE.
M84028	772512	DISK—COMPRESSOR, 12TH STAGE.
M84233	772512	DISK—COMPRESSOR, 12TH STAGE.
N57563	772512	DISK—COMPRESSOR, 12TH STAGE.
N58053	772512	DISK—COMPRESSOR, 12TH STAGE.
P11181	772512	DISK—COMPRESSOR, 12TH STAGE.
P11212	772512	DISK—COMPRESSOR, 12TH STAGE.
P51407	772512	DISK—COMPRESSOR, 12TH STAGE.
P51774	772512	DISK—COMPRESSOR, 12TH STAGE.
P52401	772512	DISK—COMPRESSOR, 12TH STAGE.
P77282	772512	DISK—COMPRESSOR, 12TH STAGE.
P97978	772512	DISK—COMPRESSOR, 12TH STAGE.
R17545	772512	DISK—COMPRESSOR, 12TH STAGE.
R18483	772512	DISK—COMPRESSOR, 12TH STAGE.
R18596	772512	DISK—COMPRESSOR, 12TH STAGE.
R45619	772512	DISK—COMPRESSOR, 12TH STAGE.
R45941	772512	DISK—COMPRESSOR, 12TH STAGE.
R72907	772512	DISK—COMPRESSOR, 12TH STAGE.
R73448	772512	DISK—COMPRESSOR, 12TH STAGE.
R73794	772512	DISK—COMPRESSOR, 12TH STAGE.
R74102	772512	DISK—COMPRESSOR, 12TH STAGE.
R74226	772512	DISK—COMPRESSOR, 12TH STAGE.
S01740	772512	DISK—COMPRESSOR, 12TH STAGE.
S01866	772512	DISK—COMPRESSOR, 12TH STAGE.
S01877	772512	DISK—COMPRESSOR, 12TH STAGE.
S01918	772512	DISK—COMPRESSOR, 12TH STAGE.
S02036	772512	DISK—COMPRESSOR, 12TH STAGE.
S19787	772512	DISK—COMPRESSOR, 12TH STAGE.
S51385	772512	DISK—COMPRESSOR, 12TH STAGE.
S51589	772512	DISK—COMPRESSOR, 12TH STAGE.
SO1816	772512	DISK—COMPRESSOR, 12TH STAGE.
B212AA0497	798512	DISK—COMPRESSOR, 12TH STAGE.
B212AA0517	798512	DISK—COMPRESSOR, 12TH STAGE.
B212AA0943	798512	DISK—COMPRESSOR, 12TH STAGE.
B212AA1106	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAJ6163	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAJ9174	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAK2345	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAK2388	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAK5240	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAK9190	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAL2466	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAL5411	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAL6708	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAM3530	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAM3774	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAM5489	798512	DISK—COMPRESSOR, 12TH STAGE.

TABLE 1.—AFFECTED COMPRESSOR DISKS AND HUBS—Continued

SN	P/N	Description
BENCAM6218	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAN0910	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAN6906	798512	DISK—COMPRESSOR, 12TH STAGE.
S94496	798512	DISK—COMPRESSOR, 12TH STAGE.
S94583	798512	DISK—COMPRESSOR, 12TH STAGE.
S94619	798512	DISK—COMPRESSOR, 12TH STAGE.
S94637	798512	DISK—COMPRESSOR, 12TH STAGE.
T28485	798512	DISK—COMPRESSOR, 12TH STAGE.
T43078	798512	DISK—COMPRESSOR, 12TH STAGE.
T43084	798512	DISK—COMPRESSOR, 12TH STAGE.
BENCAP3428	815612	DISK—COMPRESSOR, 12TH STAGE.
BENCAP7698	815612	DISK—COMPRESSOR, 12TH STAGE.
BENCAP7719	815612	DISK—COMPRESSOR, 12TH STAGE.
BENCAP7720	815612	DISK—COMPRESSOR, 12TH STAGE.
BENCAP8481	815612	DISK—COMPRESSOR, 12TH STAGE.
BENCAR2033	815612	DISK—COMPRESSOR, 12TH STAGE.

The P/N and description for each SN are provided as reference information.

TABLE 2.—AFFECTED REAR COMPRESSOR FRONT HUBS

SN	P/N	Description
2U4347	521041	HUB—REAR COMPRESSOR, FRONT.
2U4814	521041	HUB—REAR COMPRESSOR, FRONT.
2U5426	521041	HUB—REAR COMPRESSOR, FRONT.
4R1473	521041	HUB—REAR COMPRESSOR, FRONT.
6P7156	521041	HUB—REAR COMPRESSOR, FRONT.
9L9671	521041	HUB—REAR COMPRESSOR, FRONT.
9L9679	521041	HUB—REAR COMPRESSOR, FRONT.
9P3378	521041	HUB—REAR COMPRESSOR, FRONT.
9S4536	521041	HUB—REAR COMPRESSOR, FRONT.
9V7938	521041	HUB—REAR COMPRESSOR, FRONT.
2U4900	650782	HUB—REAR COMPRESSOR, FRONT.
B–21738	650782	HUB—REAR COMPRESSOR, FRONT.
2U5010	698145	HUB—REAR COMPRESSOR, FRONT.
9V8201	698145	HUB—REAR COMPRESSOR, FRONT.
3X3000	717623	HUB—REAR COMPRESSOR, FRONT.
3X6979	717623	HUB—REAR COMPRESSOR, FRONT.
5Z4371	717623	HUB—REAR COMPRESSOR, FRONT.
8X6204	717623	HUB—REAR COMPRESSOR, FRONT.
9V8645	717623	HUB—REAR COMPRESSOR, FRONT.
G23815	717623	HUB—REAR COMPRESSOR, FRONT.
G23817	717623	HUB—REAR COMPRESSOR, FRONT.
H05055	717623	HUB—REAR COMPRESSOR, FRONT.
H05059	717623	HUB—REAR COMPRESSOR, FRONT.
K47148	717623	HUB—REAR COMPRESSOR, FRONT.
N08016	717623	HUB—REAR COMPRESSOR, FRONT.
N08021	717623	HUB—REAR COMPRESSOR, FRONT.
P16923	717623	HUB—REAR COMPRESSOR, FRONT.
R15834	717623	HUB—REAR COMPRESSOR, FRONT.
S61487	717623	HUB—REAR COMPRESSOR, FRONT.
N08020	717623	HUB—REAR COMPRESSOR, FRONT.
2U4331	726222	HUB—REAR COMPRESSOR, FRONT.
4P2249	726222	HUB—REAR COMPRESSOR, FRONT.
4R2166	726222	HUB—REAR COMPRESSOR, FRONT.
9M2324	726222	HUB—REAR COMPRESSOR, FRONT.
P3757	726222	HUB—REAR COMPRESSOR, FRONT.
9S4223	726222	HUB—REAR COMPRESSOR, FRONT.
9V8146	726222	HUB—REAR COMPRESSOR, FRONT.
2X6377	726227	HUB—REAR COMPRESSOR, FRONT.
2X6391	726227	HUB—REAR COMPRESSOR, FRONT.
3X2998	726227	HUB—REAR COMPRESSOR, FRONT.
4R1190	726227	HUB—REAR COMPRESSOR, FRONT.
6X0015	726227	HUB—REAR COMPRESSOR, FRONT.
6X0071	726227	HUB—REAR COMPRESSOR, FRONT.
9P4067	726227	HUB—REAR COMPRESSOR, FRONT.
9V8100	726227	HUB—REAR COMPRESSOR, FRONT.
9V8331	726227	HUB—REAR COMPRESSOR, FRONT.
4R1272	726230	HUB—REAR COMPRESSOR, FRONT.
9V8024	726230	HUB—REAR COMPRESSOR, FRONT.

TABLE 2.—AFFECTED REAR COMPRESSOR FRONT HUBS—Continued

SN	P/N	Description
9V8107	726230	HUB—REAR COMPRESSOR, FRONT.

The P/N and description for each SN are provided as reference information.

Prohibition Against Installation of Disks and Hubs Listed in Table 1

(g) After the effective date of this AD, do not install any disk or hub listed in Table 1 of this AD that has zero cycles-in-service since May 14, 2001.

(h) After the effective date of this AD, do not return to service any engine that has a disk or hub listed in Table 1 of this AD that has zero cycles-in-service since May 14, 2001.

Definition of Shop Visit

(i) A shop visit is defined as an engine and/or module removal where engine maintenance entails separation of pairs of major engine flanges or the removal of a disk, hub or spool at a maintenance facility, regardless of the scheduled maintenance action or the reason for engine removal.

Definition of Part Accessibility

(j) For the purposes of this AD, accessibility of the HPC rear hub is removing the hub from the engine.

Alternative Methods of Compliance

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

Related Information

(l) None.

Material Incorporated by Reference

(m) You must use Pratt & Whitney Alert Service Bulletin (ASB) No. JT8D A6442, dated April 4, 2003, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the Internet at *http://dms.dot.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on August 19, 2005.

Richard Noll,

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

[FR Doc. 05–16903 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No: 050705177–5177–01]

RIN 0693–AB55

Fastener Quality Act

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Final rule.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, and the Director of the United States Patent and Trademark Office (USPTO), United States Department of Commerce, are amending the rules that implement the Fastener Quality Act of 1999 to provide that all documents submitted in connection with the recordal of fastener insignia must be mailed to a particular postal box maintained by United States Patent and Trademark Office.

DATES: This final rule is effective on September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Ari Leifman, Office of the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313–1451, telephone number (571) 272–9572.

SUPPLEMENTARY INFORMATION:

Background

The Fastener Quality Act of 1999, Public Law 101–592 (as amended by Pub. L. 104–113, Pub. L. 105–234 and Pub. L. 106–34) requires the Secretary of Commerce to establish a program for the recordation of the identifying insignia of certain fasteners. The rules set forth at Subpart D of 15 CFR 280.300 *et seq.* accordingly provide for a recordation system, and that system is maintained at the United States Patent and Trademark Office (USPTO). One of the rules, 15 CFR 280.310(d), provides that all documents pertaining to recordation must be mailed to a particular postal box maintained by the USPTO in Washington, DC.

The efficiency of the insignia recordation program will be enhanced if documents submitted in connection with the program are mailed to a postal box that is close to the USPTO's headquarters in Alexandria, Virginia. Accordingly, Section 280.310(d) is amended to provide that these documents be mailed to that postal box.

This final rule amends section 280.30, Application for Insignia, to identify the postal box to which all documents pertaining to recordation should be sent.

Additional Information

Executive Order 12866

This rule of agency organization and management is not subject to Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

Prior notice and an opportunity for public comment are not required for this rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). This rule revises the regulations to identify the address where documents submitted in connection with the recordal of fastener insignia may be mailed.

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule involves a collection of information that is subject to the Paperwork Reduction Act (PRA), and that has been approved by the Office of Management and Budget (OMB) under control number 0651–0028. Notwithstanding any other provision of the law, no person is required to comply, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 280, Subpart D

Application for Insignia.

■ For the reasons set forth in the preamble, the National Institute of Standards and Technology and the United States Patent and Trademark Office amend 15 CFR Part 280, Subpart D, as follows:

PART 280—[AMENDED]

■ 1. The authority citation for Part 280 continues to read:

Authority: 15 U.S.C. 5401 *et seq.*

■ 2. Section 280.310 is amended by revising paragraph (d) to read as follows:

§ 280.310 Application for insignia.

* * * * *

(d) Applications and other documents should be addressed to: Director, United States Patent and Trademark Office, P.O. Box 16471, Arlington, VA 22215–1471 Attn: FQA

Dated: August 10, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

William Jeffrey,

Director, National Institute of Standards and Technology.

[FR Doc. 05–17020 Filed 8–25–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, and 529

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of 16 new animal drug applications (NADAs) and 1 abbreviated NADA (ANADA) because they are no longer manufactured or marketed. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of these NADAs.

DATES: This rule is effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–7818, e-mail: *pesposit@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the 16 NADAs and 1 ANADA listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA Number, Product (Drug)	21 CFR Section Affected (Sponsor Drug Labeler Code)
Abbott Laboratories, North Chicago, IL 60064	NADA 99–568, FURANACE Caps (nifurpirinol)	529.1526 (000074)
Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407	NADA 140–889, DERM–OTIC Ointment (neomycin sulfate; nystatin; thiostrepton; triamcinolone acetonide)	524.1600a (000332)
First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123	NADA 48–646, THERAZONE Injection (phenylbutazone)	522.1720 (058829)
Happy Jack, Inc., Snow Hill, NC 28580	NADA 121–556, Selenium Sulfide Suspension (selenium disulfide) NADA 121–723, Nitrofurazone Dressing NADA 125–137, FILARICIDE Capsules (diethylcarbamazine citrate)	524.2101 (023851) 524.1580b (023851) 520.622d (023851)
IMPAX Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544	NADA 92–151, N-Butyl Chloride Canine Worming Caps NADA 65–065, Tetracycline HCl Caps NADA 138–900, Dichlorophene/Toluene	520.260 (000115) 520.2345a (000115) 520.580 (000115)
Jorgensen Laboratories, Inc., 1450 North Van Buren Ave., Loveland, CO 80538	NADA 10–481, SUREJETS (salicylic acid)	529.2090 (048087)
Pliva d.d., Ulica grada Vukovara 49, 10000 Zagreb, Croatia	ANADA 200–232, GEOMYCIN 200 Injection (oxytetracycline)	522.1660a (011722)
Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166–6812	NADA 65–113 AUREO Sulfa Soluble Powder (chlortetracycline/sulfamethazine)	N/A (017800)
Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298	NADA 140–848, VETEEZE Injection (diazepam)	522.575 (063238)
Teva Pharmaceuticals USA, 650 Cathill Rd., Sellersville, PA 18960	NADA 131–806, Furosemide Tablets	520.1010 (000093)

TABLE 1.—Continued

Sponsor	NADA Number, Product (Drug)	21 CFR Section Affected (Sponsor Drug Labeler Code)
Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137	NADA 10–886, Purina Liquid Wormer (piperazine citrate)	N/A (051311)
Wyeth Laboratories, Division American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101	NADA 10–782, SPARINE Injection (promazine)	522.1962 (000008)
	NADA 55–008, BICILLIN Fortified (penicillin G benzathine and penicillin G procaine)	522.1696a (000008)

Following the withdrawal of approval of these NADAs, Biocraft Laboratories, Inc., IMPAX Laboratories, Inc., Jorgensen Laboratories, Inc., Pliva d.d., and Teva Pharmaceuticals USA are no longer sponsors of an approved application. Therefore, we are removing entries for these five sponsors from 21 CFR 510.600(c).

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals and a current format. In addition, FDA has noticed that the regulations do not reflect approved NADA 065–063 for Tetracycline Capsules sponsored by Eon Labs Manufacturing, Inc. At this time, the regulations in 21 CFR 520.2345a are amended to reflect this approved product.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entries for ''Biocraft Laboratories, Inc.'', ''IMPAX Laboratories, Inc.'', ''Jorgensen Laboratories, Inc.'', ''Pliva d.d.'', and ''Teva Pharmaceuticals USA''; and in the table in paragraph (c)(2) by removing the entries for ''000093'', ''000115'', ''000332'', ''011722'', and ''045087''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.260 [Amended]

■ 4. Section 520.260 is amended in paragraph (b)(2) by removing ''000115 or''; and by removing paragraph (c).

§ 520.580 [Amended]

■ 5. Section 520.580 is amended in paragraph (b)(1) by removing '', 000115''.

■ 6. Section 520.622d is revised to read as follows:

§ 520.622d Diethylcarbamazine citrate capsules.

(a) *Specifications*. Each capsule contains 12.5, 50, 200, or 400 milligrams (mg) diethylcarbamazine citrate.

(b) *Sponsor*. See No. 011014 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount/indications for use*. 3 mg per pound (/lb) body weight daily for prevention of heartworm disease (*Dirofilaria immitis*); 25 to 50 mg/lb body weight in a single dose as an aid in the treatment of ascarid infections (*Toxocara canis* and *Toxascaris leonina*).

(2) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.1010 [Amended]

■ 7. Section 520.1010 is amended by removing paragraph (b)(2); and by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(2) and (b)(3), respectively.

■ 8. Section 520.2345a is revised to read as follows

§ 520.2345a Tetracycline hydrochloride capsules.

(a) *Specifications*. Each capsule contains 50, 100, 125, 250, or 500 milligrams (mg) tetracycline hydrochloride.

(b) *Sponsor*. See sponsors in § 510.600(c) of this chapter for use as in paragraph (c) of this section:

(1) No. 000009: 250 mg per capsule.

(2) No. 000069: 125, 250, or 500 mg per capsule.

(3) No. 000185: 50, 100, 250, or 500 mg per capsule.

(c) *Conditions of use in dogs*—(1) *Amount*. 25 mg per pound of body weight per day in divided doses every 6 hours.

(2) *Indications for use*. For treatment of infections caused by organisms sensitive to tetracycline hydrochloride, such as bacterial gastroenteritis due to *E. coli* and urinary tract infections due to *Staphylococcus spp*. and *E. coli*.

(3)*Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.575 [Removed]

■ 10. Section 522.575 is removed.

§ 522.1660a [Amended]

■ 11. Section 522.1660a is amended in paragraph (b) by removing '', 011722''.

§ 522.1696a [Amended]

■ 12. Section 522.1696a is amended in paragraph (b)(1) by removing ''000008,''.

§ 522.1720 [Amended]

■ 13. Section 522.1720 is amended in paragraph (b)(1) by removing '', 058829''.

■ 14. Section 522.1962 is amended by revising paragraphs (b) and (c) to read as follows:

§ 522.1962 Promazine hydrochloride.

* * * * *

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter for use as in paragraph (c) of this section:

(1) No. 000856 for use as in paragraphs (c)(1)(i)(A), (c)(1)(ii)(A), (c)(1)(iii), and (c)(2) of this section.

(2) No. 061623 for use as in paragraphs (c)(1)(i)(B), (c)(1)(ii)(B), and (c)(1)(iii) of this section.

(c) *Conditions of use*—(1)*Horses*—(i) *Amount*—(A) 0.2 to 0.5 milligrams per pounds (mg/lb) body weight intramuscularly or intravenously every 4 to 6 hours.

(B) 0.2 to 0.5 mg/lb body weight intravenously as required.

(ii) *Indications for use*—(A) For use as a tranquilizer, preanesthetic, or for minor operative procedures in conjunction with local anesthesia; and as adjunctive therapy for tetanus.

(B) For use as a tranquilizer and preanesthetic.

(iii) *Limitations*. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Dogs and cats*—(i) *Amount*. 1 to 2 mg/lb body weight intramuscularly or intravenously every 4 to 6 hours.

(ii) *Indications for use*. For use as a tranquilizer, preanesthetic, for minor operative procedures in conjunction with local anesthesia, as adjunctive therapy for tetanus, and as an antiemetic prior to worming; or to prevent motion sickness in dogs.

(iii) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 15. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 16. Section 524.1580b is amended by redesignating paragraph (c) as paragraph (d); by reserving new paragraph (c); and by revising paragraph (b) and newly redesignated paragraph (d) to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) *Sponsors*. See sponsors in § 510.600(c) of this chapter.

(1) See Nos. 000010, 000069, 050749, 051259, 058005, and 061623 for use on dogs, cats, or horses.

(2) See No. 017135 for use on dogs and horses.

(c) [Reserved]

(d) *Conditions of use*—(1) *Amount*. Apply directly on the lesion with a spatula or first place on a piece of gauze. The preparation should remain on the lesion for at least 24 hours. Use of a bandage is optional.

(2) *Indications for use*. For prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of dogs, cats, or horses.

(3) *Limitations*. For use only on dogs, cats, and horses (not for food use). In case of deep or puncture wounds or serious burns, use only as recommended by veterinarian. If redness, irritation, or swelling persists or increases, discontinue use; consult veterinarian.

§ 524.1600a [Amended]

■ 17. Section 524.1600a is amended in paragraph (b) by removing ‘‘, 000332’’.

■ 18. Section 524.2101 is amended by revising paragraphs (b) and (c) to read as follows:

§ 524.2101 Selenium disulfide suspension.

* * * * *

(b) *Sponsors*. See Nos. 000061, 017135, and 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use on dogs*—(1) *Indications for use*. For use as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema, seborrhea, and nonspecific dermatoses.

(2) *Amount*. One to 2 ounces per application.

(3) *Limitations*. Use carefully around scrotum and eyes, covering scrotum with petrolatum. Allow the shampoo to remain for 5 to 15 minutes before thorough rinsing. Repeat treatment once or twice a week. If conditions persist or if rash or irritation develops, discontinue use and consult a veterinarian.

PART 529—OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 19. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1526 [Removed]

■ 20. Section 529.1526 is removed.

§ 529.2090 [Removed]

■ 21. Section 529.2090 is removed.

Dated: June 30, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–16995 Filed 8–25–05; 8:45 am]

BILLING CODE 4160–01–S

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 226

[Aid Reg 226]

RIN 0412–AA55

Administration of Assistance Awards to U.S. Non-Governmental Organizations; Marking Requirements

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This final rule implements the statutory requirement that all USAID programs be marked appropriately overseas as ‘‘American Aid.’’ It does so by adding a USAID regulation that requires recipients of USAID funded grants and cooperative agreements and other assistance awards—with certain Presumptive Exceptions and subject to a waiver if warranted by specific conditions in the cooperating country—to mark programs, projects, activities, public communications, and commodities with the USAID Standard Graphic Identity (USAID Identity, defined below.

EFFECTIVE DATES: January 2, 2006.

FOR FURTHER INFORMATION CONTACT: John Niemeyer (or designee), Assistant General Counsel, Office of the General Counsel, USAID, Rm. 6.06.95, 1300 Pennsylvania Ave., NW., Washington, DC 20523; telephone: (202) 712–4776 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 20, 2004, USAID published in the **Federal Register** (69 FR 75885–75887) a proposed rule to implement fully Section 641 of the Foreign Assistance Act of 1961, as amended. The Agency provided a forty five (45)-day public comment period on the proposed rule, which ended on February 3, 2005. The Agency also offered the public the opportunity to submit comments by surface mail, e-mail or fax.

I. Background

The marking of foreign aid as assistance from the U.S. Government was first required during the Marshall Plan when Congress became concerned about poorly marked U.S. foreign aid donations to European countries. USAID’s framework legislation, the Foreign Assistance Act of 1961, as amended, section 641, requires that all programs under the Foreign Assistance Act, including assistance awards, be identified appropriately overseas as ‘‘American Aid.’’ While USAID has required its contractors to mark U.S.

Government-funded foreign assistance, that requirement has applied to recipients of grants and cooperative agreements only to the limited extent of acknowledging USAID funding in publications and media releases. A Commission on Public Diplomacy report, ''Changing Minds, Winning Peace: a New Strategic Direction for U.S. Public Diplomacy in the Arab World,'' both commends and encourages USAID to continue to ''become more forthright about branding its activities, so recipients know that they are receiving contributions from the American people.''

Beneficiaries of U.S. aid receive billions of dollars of foreign assistance every year in the form of grants and cooperative agreements, often with little to no awareness that the assistance is provided by the American people through USAID. Clear evidence of the new visibility and value of foreign aid came in the aftermath of the recent U.S. tsunami relief effort, the first time USAID's new ''brand identity'' was used publicly. According to a State Department study, in 2004, favorable opinions of the U.S. were at record lows in many Muslim countries. But, in early 2005, favorability of the U.S. nearly doubled in Indonesia (from 37 to 66 percent) thanks to the massive delivery of—for the first time ''well branded''—U.S. foreign assistance. A Pew Research study confirms this: ''Positive opinions of the U.S. in Indonesia, which had plummeted to as low as 15 percent in 2003, also have rebounded to 38 percent. The U.S. tsunami aid effort has been widely hailed there; 79 percent of Indonesians say they have a more favorable view of the U.S. as a result of the relief efforts.'' A senior U.S. diplomat summarized the impact of our campaign this way: ''The people of Ache (Indonesia) saw the branding; they knew right away the U.S. Government was responding. That absolutely had a major impact on their perception of the U.S. I think our new global branding is a major foreign policy achievement.'' Such awareness of the generosity of the American people is an important part of the U.S. Government's public diplomacy strategy and a critical part of the post 9/11 war against terrorism.

USAID takes the following action to ensure that the American people are visibly acknowledged for their generosity in providing foreign assistance. USAID has carefully considered comments to the proposed rule, and adjusted the final rule in response,[1] as set out more fully below.

II. This Rule

A. Purpose of Rule

The purpose of this rule is to bring USAID regulations into full alignment with Section 641 of the Foreign Assistance Act of 1961, as amended, which requires that all programs under the Foreign Assistance Act be marked appropriately overseas as ''American Aid.'' USAID also takes this action for the policy reasons noted above.

B. USAID Regulations Amended by Rule

This rule adds a new provision, (§ 226.91), to 22 CFR part 226, Administration of Assistance Awards to U.S. Non-Governmental Organizations, and amends § 226.2 by adding new definitions.

The new § 226.91 applies to all Federal financial assistance awarded by USAID to U.S. Non-Governmental Organizations (NGOs). Award documentation for such Federal financial assistance will include standard clauses that incorporate the requirements of § 226.91, and USAID internal directives will highlight, explain, and incorporate § 226.91 by reference.

1. Scope of the marking requirement. The rule is intended to require marking for all implementation activities overseas under USAID funded grants and cooperative agreements and other assistance awards to NGOs, and to require use of a marking provision in any NGO-issued subaward of USAID funding.

2. Threshold for marking requirements. The rule applies to all USAID partially or fully funded grants and cooperative agreements and other assistance awards to U.S. NGOs, and to subawards of USAID funding issued by U.S. NGOs.

3. Extent of the marking requirements. In most cases, marking of a size and prominence equivalent to that of the recipients and/or other donors is required. USAID reserves the right to require marking of a greater size or prominence on a per case basis, when it is the majority donor of a program, project, activity, public communication, or commodity. In the event the recipient or other donor does not chose to mark with its own graphic identity or logo, USAID reserves the right to require marking with the USAID Identity.

USAID has greatly reduced the paperwork required to comply with this rule by limiting those who must submit it. The Agreement Officer will request a ''Branding Strategy,'' defined in 22 CFR 226.2, only from ''Apparent Successful Applicants,'' defined in 22 CFR 226.2 for USAID funds which have been recommended for award after technical evaluation of their applications. The Branding Strategy will describe how the program will be named, promoted, and communicated to beneficiaries and cooperating country citizens and how donors will be acknowledged. The Branding Strategy will be a required submission but will not be competitively evaluated. The Branding Strategy will be reviewed for adequacy, negotiated, and included in the award by the Agreement Officer. The Agreement Officer also will request Apparent Successful Applicants to provide a ''Marking Plan,'' defined at 22 CFR 226.2., detailing the type (for example, plaque or adhesive labels) and level of marking (for example, every computer or just one sign) for activities, commodities, public communications and other deliverable items that will visibly bear the USAID Identity. The Marking Plan also will be reviewed for adequacy, negotiated, and included in the award by the Agreement Officer. The approved Marking Plan will be used to monitor compliance with marking requirements. Further, specific marking instructions and examples will be provided to recipients in the USAID Partner Co-Branding Guide. USAID will consult with interested parties on development of the guide.

4. Exceptions. USAID has established ''Presumptive Exceptions,'' that may apply to obviate marking requirements where marking would interfere with USAID and recipient program goals, or marking would be inefficient or ineffective. Applicants may request the USAID Agreement Officer to approve one or more applicable Presumptive Exceptions as part of their Marking Plan. Any approved exceptions will apply for the life of the award, unless provided otherwise. The ''Presumptive Exceptions'' provision is described fully at 22 CFR § 226.91 (h).

5. Waiver provisions. Because USAID intends that marking requirements be carried out reasonably, erring on the side of safety, USAID has provided in the rule an ''emergency'' waiver authority for USAID Principal Officers, defined at 22 CFR 226.2, who currently exercise similar waiver authority for marking requirements under contracts. By virtue of being posted in the cooperating country, Principal Officers have access to current and relevant

[1] Changes to the proposed rule in the final rule demonstrate that USAID has taken the comments into account, and all changes are a logical outgrowth of the proposed rule and comments. *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1258, 1283 (1st Cir. 1987) (Agency can make even substantial changes from proposed version as long as changes are ''in character with'' and a ''logical outgrowth of'' proposed rule.).

information concerning political, safety and security concerns, including that provided by recipients, and can anticipate adverse impact in the cooperating country. No marking is required while a waiver request is pending determination by a USAID Principal Officer. The waiver provision is described fully below.

In sum, Presumptive Exceptions will be approved by the Agreement Officers, waivers by the Principal Officers. Inclusion of the Presumptive Exceptions provision is intended to address the majority of common cases where USAID marking requirements may not apply; the waiver provision is intended to address cooperating country political, safety and security concerns, emergencies, or special cases.

Please note, when marking with the USAID Identity is not required due to an exception or waiver, USAID may review how program materials will be marked if the USAID identity is removed.

6. Compliance. USAID will monitor and enforce the approved Marking Plan in USAID awards, and USAID's Office of the Inspector General will audit both USAID and recipient compliance with the approved Marking Plan. Recipients in non-compliance with the Marking Plan are subject to the suspension and termination provisions of 22 CFR 226.61 and 226.62.

7. Costs. Recipients are required to submit proposed costs for branding and marking as part of their total cost estimate, which may be revised and negotiated when Apparent Successful Applicants are required to submit a Marking Plan. All marking costs that are reasonable, allocable and allowable will be funded by USAID.

III. Response to Comments Received on the Proposed Rule

On December 20, 2004, USAID published in the **Federal Register** (Volume 69, Number 243, Page 75885–75887) a Proposed Rule for Administration of Assistance Awards to U.S. Non-Governmental Organizations, Marking Requirements. By February 3, 2005, the closing date for comments, USAID received forty-seven (47) comments, including comments from NGOs that have received USAID funding, trade associations that represent them, and other interested parties. All of the comments were read, and most are discussed below and reflected in the final rule, on the following basis: While there is no legal requirement to respond to every comment or discuss every fact or opinion included, all have been considered that could potentially challenge a fundamental premise or are relevant and significant.

The following is a summary of comments by issue, and the Agency's responses to those comments.

A. General Comments

Comment: Several comments expressed concern that USAID restricted discussion of the proposed marking requirements by sending an Agency notice to employees, requesting that all comments on the proposed rule be made through the rulemaking process.

Response: USAID engaged in rulemaking to ensure that the proposed rule would benefit from public comment; to provide transparency; and so all interested parties would have an equal opportunity to comment, not just those in the Washington area or with access to USAID staff. The Agency notice was intended to ensure that comments by NGOs and other interested parties would be taken into account during a formal process, rather than through informal conversations with USAID employees who could not directly affect its outcome. As part of this formal rulemaking process, USAID is bound by the ''ex parte contact'' rule to limit comments to the rulemaking process, to ensure the final rule was based on comments in the public record, as well as Agency expertise.

Comment: While there was nearly uniform support for the purpose of the proposed rule, to ensure that aid recipients overseas understand that all USAID-funded assistance awards are from the American people, several comments challenged the authority of the Agency to issue a rule requiring NGOs to mark USAID funded assistance with the USAID Identity.

Response: USAID's framework legislation, the Foreign Assistance Act of 1961, as amended, Section 641, provides that ''[p]rograms under this Act shall be identified appropriately overseas as 'American Aid.' '' Section 621 of that same Act provides that the head of USAID ''may from time to time promulgate such rules and regulations as may be necessary'' to carry out Agency functions under the Act, including Section 641 marking requirements. This authority is not contradicted, as one commenter argues, because Congress did not say explicitly how the marking requirement was to be implemented. Under the above authority, implementation is left to Agency discretion.

Comment: Several comments also questioned the timing and reason for the rule, pointing out that USAID has existing, less comprehensive marking requirements for media products and publications in its standard provisions for grants to NGOs.

Response: In response to the 9/11 tragedy, the U.S. national security strategy has been revised to include, for the first time, development along with diplomacy and defense. As the lead development assistance agency of the U.S. Government, USAID has the responsibility to ensure that international development plays a vital role in national security by ensuring beneficiaries are aware the aid—including the funding of grants and cooperative agreements—is from the American people. Recent surveys show that more comprehensive marking requirements result in a much more favorable impression of the U.S abroad.

Comment: Several comments also questioned the approval of the proposed rule by the Office of Management and Budget (OMB) or argued that before engaging in rulemaking, USAID had to seek a deviation from OMB under 22 CFR part 226.4.

Response: Both the proposed rule and final rule have been reviewed by OMB's Office of Information and Regulatory Affairs under Executive Order 12866. The deviation procedure set forth at 22 CFR 226.4 is not pertinent. As noted above, section 621 of the Foreign Assistance Act of 1961, as amended, provides USAID with statutory rulemaking authority. USAID used this rulemaking authority to issue 22 CFR part 226, Administration of Assistance Awards to U.S. Non-Governmental Organizations, including section 226.1, which provides that ''[e]xcept as otherwise authorized by statute, this part establishes uniform administrative requirements * * *' As noted in the proposed rule and above, marking is expressly required by statute, and so comes within the 'otherwise authorized by statute' exception of § 226.1. Section 226.4, ''Deviations,'' is not related to the purpose and applicability of the regulations, but rather deviations from their general applicability as authorized by OMB and if not prohibited by statute. The comments calling for USAID to obtain an OMB deviation to engage in rulemaking have the purpose of such a deviation backwards: A deviation is not required to permit rulemaking, particularly when rulemaking is expressly required by a statute—but to deviate from rules already promulgated by rulemaking and included in any part 226 of 22 CFR. Any reading of § 226.4 to the contrary contradicts with its plain language, and would frustrate its purpose by locking the current version of 22 CFR part 226 in stone, a result contrary to USAID's express and ongoing rulemaking authority, section

621 of the Foreign Assistance Act of 1961, as amended.

Comment: No similar policy concerning marking is apparently being pursued by the Department of State, which has overall responsibility for conduct of foreign relations. Thus the marking requirement is simply 'a USAID attempt to raise its visibility.'

Response: The USAID marking initiative, including the extension of full marking requirements to NGOs, has been coordinated with the U.S. Department of State. Programs implemented by the State Department, such as the Middle East Partnership Initiative (MEPI) and the President's Emergency Plan For AIDS Relief (PEPFAR) under the authority of the Global AIDS Coordinator, have their own marking requirements. USAID is the lead foreign assistance agency of the U.S. Government, and it is appropriate for USAID to exercise leadership in the marking of foreign assistance. Because USAID often plays a role in implementing programs funded in part or in whole by sister agencies such as the Department of State, recipients may be required to include the logo of other U.S. Government agencies on USAID funded programs, projects, activities, public communications, and commodities. In such circumstances, guidance will be provided on a case by case basis.

The characterization of the initiative as simply a 'USAID attempt to raise its visibility overseas' misinterprets the intention of the message and the design of the USAID Identity with its emphasis not on USAID as the acronym for the Agency but 'US-AID' (differentiated by colors) as a ''brand'' of foreign assistance, like Japanese or British aid, as well as the emphasis of the tagline ''From the American People.''

Comment: USAID also received many comments to the effect that the proposed rule undercuts the independence of grantees, oversteps the Federal Grant and Cooperative Agreement Act, makes grantees an arm of the U. S. Government and, by extending marking requirements, is treating grantees like contractors.

Response: Marking is required by the Foreign Assistance Act, as noted above. Nothing in the marking requirement is inconsistent with the definition of a grant—to accomplish a public purpose of support or stimulation authorized by a federal statute—in this case the Foreign Assistance Act. Marking does not change the funding or purpose of a grant or cooperative agreement. All the marking requirement does is raise the level of visibility of the American people's donation. Other donors to NGOs require similar acknowledgement. See EU Visibility Guidelines for External Actions, November 2002. The co-branding requirements established by this rule are much less comprehensive than USAID's branding requirements for contractors, which do not permit co-branding or marking with a contractor logo, and establish rigorous design standards similar to those used for USAID's own external communications.

Comment: Several comments expressed concern that markings with high visibility would block host-country national 'ownership' of the program or project, cause local citizens to view projects adversely, compromise NGOs' apolitical position in a cooperating country or otherwise harm the acceptance and effectiveness of programs and projects in some situations.

Response: The Branding Strategy and Marking Plan submitted by the Apparent Successful Applicant provides the opportunity to propose a program or project name, outline the promotional and communication activities, and to recommend which items are to be marked. Such participation by recipients 'up front' should ensure that their concerns about marking requirements are addressed in program implementation. USAID also has included a ''Presumptive Exceptions'' provision that may apply to obviate marking requirements, see section 226.91(h) below. Also, USAID has amended the 'waiver provision' of the final rule to include waivers in case of adverse reaction in the cooperating country, see section 226.91(j), below.

USAID employees are dedicated development professionals who share NGO partners' focus on designing and implementing successful programs. They are responsible for reporting results and ultimately accountable to the Executive Branch, Congress, and the American people for return on their investment. For these reasons, USAID will ensure that use of markings does not cause the program or project to fail.

Comment: Several comments suggested including marking requirements in the initial Request for Proposals (RFPs) or Annual Program Statements (APS) for implementation of a program or project. The comments also included many suggestions for more flexibility in application of the marking requirements.

Response: USAID has drafted the rule to minimize the burden on applicants, and to maximize flexibility. Only those Apparent Successful Applicants who have been recommended for award after technical evaluation will be requested to submit a Branding Strategy and Marking Plan by the Agreement Officer. Both the Strategy and Plan enable implementing partners to recommend how to customize global marking requirements to individual activities, subject to the approval of the Agreement Officer.

Comment: The comments also expressed concern over, and requested clarification about, the breadth—for example, 'all' commodities—of the marking requirements.

Response: The Marking Plan enables implementing partners to propose the appropriate level of marking by detailing program commodities that will visibly bear the USAID Identity (for example, mark all computers but not all desks and chairs in a school room). The new 'Presumptive Exceptions' provision narrows the breadth of the marking requirement on a case-by-case basis, as set forth in the final rule. It also includes a de minimis' rule for items too small or otherwise impracticable to mark.

Comment: The comments also raised calls for consultation by USAID on the creation of the referenced 'USAID Partner Co-Branding Guide.'

Response: While the specific implementation of statutory marking requirements is well within USAID's sole discretion, USAID will actively consult with interested parties on the USAID Partner Co-Branding Guide.

Comment: Several comments requested clarification that the marking requirement does not apply to recipient organization offices or vehicles.

Response: Because the intent of the USAID marking requirements is to mark programs and projects, not people, the final rule does not require marking of vehicles, offices, and other administrative items for internal use by the recipient. See Definitions, ''Commodities,'' § 226.2, below.

Comment: Many of the comments raised security concerns and, while praising the concept, additional questions about the waiver procedure. There was also considerable confusion about application of the 'no double standard' policy and requests to delete the provision directing Mission Directors to recommend removal of a recipient organization's own marking when granting a waiver. Finally, there were calls for waivers of longer than six months duration without review and for blanket waivers under certain circumstances, such as when a recipient was implementing a USAID funded program in a country in which U.S. Government employees received danger pay or where there were active U.S. Government military operations.

Response: USAID is determined to implement these marking requirements

by erring on the side of safety. Recipients in good faith may request a waiver through the Cognizant Technical Officer (CTO) at any time after award. No marking is required while a waiver determination is pending. The waiver provision has been changed to clarify that the 'no double standard' provision requires the USAID Principal Officer making the waiver determination to consider at a minimum, information provided by the recipient in its request for the waiver (NGOs) and U.S Government security information, where available. The provision concerning Principal Officers' recommendations to recipients about removal of their own markings has been deleted. Decisions of the Principal Officer can be appealed to that Principal Officer's cognizant Assistant Administrator in USAID.

Comment: Several comments expressed concern or confusion about the provisions in the proposed rule at § 226.91(j) and (k), providing for disclaimers of a U.S. Government employment status for recipient employees engaging in public speaking, writing or promotional efforts concerning the USAID funded program or project, and disclaimers of U.S. Government employment status for use of the USAID Identity on employee business cards or other personally identifying materials.

Response: Sections 226.91(j) and (k) in the proposed rule have been deleted from the final rule. Recipients must seek guidance from the Cognizant Technical Officer (CTO) concerning any employee use of the USAID Identity on employee business cards or other personally identifying materials.

Miscellaneous changes to the final rule based on general comments or Agency review: The non-retroactivity provision has been clarified in the final rule, and an additional presumptive exception has been added to address International Committee of the Red Cross concerns that any required marking not violate international neutrality standards. The final rule also is clarified to state expressly that marking applies to commodities provided under Title II Food Aid; the Food Aid regulations at 22 CFR 211 will be subsequently amended to take into account this final rule. Finally, §§ 226.91(f) Exceptions and 226.91(g) Waivers in the proposed rule have been re-lettered 226.91(h) Exceptions and § 226.91(j) Waivers in the final rule.

B. Comments on Specific Provisions

Comment, 226.2., Definitions: several comments called for USAID to define further terms such as activity, equipment, programs, projects, and supplies.

Response: USAID has amended the definitions section to include definitions of ''Activity,'' ''Programs,'' ''Projects,'' ''Principal Officers,'' ''Subrecipient'' and ''Technical Assistance'' from USAID's Automated Directive System Glossary. In addition, definitions of ''Apparent Successful Applicant,'' ''Branding Strategy'' and ''Marking Plan'' have been added. ''Equipment'' and ''Supplies'' are already defined at 22 CFR 226.2.

Comment, 226.90, Appeals: several comments called for USAID to explicitly provide an appeals process for a USAID Principal Officer's determination regarding a waiver request.

Response: Agreed. Decisions of the Principal Officer can be appealed to that Principal Officer's cognizant Assistant Administrator in USAID.

Comment, 226.91(a), ''all programs, projects, activities, public communications and commodities funded by USAID'': several comments were concerned about the breadth of the marking requirement, and requested a 'de minimis' exception to marking requirements or further definition of the terms commodities, supplies and the like.

Response: USAID provides an exclusion for vehicles, offices and non-program deliverable, administrative items for recipient's internal use in the definition of 'commodities', see definitions, § 226.2, and also a 'Presumptive Exceptions' provision for items too small or impracticable to mark, see section § 226.91 (h)(5).

Comment, § 226.91(a), applicability to subawards: Several comments asked for clarification or recommended that marking requirements not 'flow down' to subawards.

Response: A 'flow down' required clause is included in the final rule. Because subrecipients are the final implementing partner for many USAID funded grants and cooperative agreements, the marking requirements would have only limited effect on cooperating country recipients unless the marking requirements flow down to subawards and subrecipients.

Comment, § 226.91(a)(1)–(3): There were many comments questioning the application of the three-tiered 'percentage of funding' trigger for marking requirements.

Response: the three-tiered system has been deleted and replaced with a much simpler provision requiring marking with the USAID Identity of a size and prominence equivalent to that of the recipient or other donors for all grants or cooperative agreements or other awards or subawards which USAID is partially or fully funding. USAID reserves the right to require marking of a greater size on a per case basis, when it is the majority donor.

Comment, § 226.91(c): Several comments raised concerns that overzealous USAID marking requirements might compromise or undercut program or project goals or conflict with local practices or laws.

Response: USAID has added a 'Presumptive Exceptions' provision that will apply, at the Agreement Officer's discretion, to obviate marking requirements where marking would interfere with USAID and recipient goals, or marking would be inefficient, ineffective, or in conflict with local norms. There is also an exception if marking would be contrary to international law. Recipients will have a chance to request approval of these or any other applicable Presumptive Exceptions in their Marking Plan. All applicable exceptions will be approved and included in the Marking Plan by the USAID Agreement Officer.

Comment, § 226.91(d): There were several requests to define further 'technical assistance' and state exactly what must be marked. In addition, specific concern was expressed that the application of marking requirements to election materials and monitoring, independent media programs, public service announcements and other independent radio or television broadcasts, and civil and human rights work might undercut the goals of those programs in fostering a civil society independent from identification with the cooperating country government or other state actors.

Response: USAID has included a definition of ''technical assistance'' in the final rule at § 226.2. USAID has also included a 'Presumptive Exceptions' section in the final rule, see § 226.91 (h), which addresses concerns about marking election or democracy materials, independent media products, and other politically sensitive programs, projects, or activities.

Comments, § 226.91(f), waivers: There were many comments and questions about application of the waiver provisions. While there was widespread support of the waiver concept, comments differed on its proposed application. USAID was advised to consider waivers of an indeterminate duration; to vest waiver authority in, variously, the Agreement Officer, the CTO, an official whose performance was not tied to desired Agency outcomes in a particular country; or to create a 'marking' ombudsman. Several comments expressed concern that

Mission Directors or other Principle Officers have not readily exercised other waiver authorities, or would be restrained in their exercise of waiver authority by Ambassadors or other State Department officials.

Response: As noted above in General Comments, changes have been made to the waiver provision based on comments received in the rulemaking process. Specifically, USAID accepts the comment that the waivers be of longer than six months duration; the waiver term has been changed to provide for a waiver of unlimited duration but one that is subject to Principal Officer review at any time due to changed circumstances. USAID also accepts the suggestion that an appeal process be provided, and allows the Principal Officer's waiver decision to be appealed to the cognizant Assistant Administrator in USAID.

Despite these changes, the waiver authority remains in the first instance with the USAID Principal Officers at an overseas post. USAID has confidence in its senior officials on the ground, who as a class have been making waiver determinations on marking requirements for contractors and waivers in other sensitive areas, for years. The appeals process provides for reconsideration of Principal Officer determinations.

Comment. § 226.91(g), role of CTOs in monitoring: Several comments expressed concern that the CTO was required to 'police' marking requirements.

Response: USAID intends that the marking requirements, like other requirements of the USAID grant or cooperative agreement or other assistance award, be monitored and, if need be, enforced. USAID has simplified and clarified the process: the Marking Plan, once it is approved and incorporated in the award, becomes the basis for CTO monitoring. USAID will be amending its internal 'CTO Designation Letter' and providing specific training to CTOs to cover these new responsibilities.

Comment, § 226.91(h), materiality of marking requirement: Several comments expressed concern or even intimidation about the designation of the marking requirement as a 'material' provision of the grant or cooperative agreement.

Response: The term 'material' has been deleted, and the enforcement provisions are the same uniform suspension and termination provisions that apply to all other provisions of the award, see 22 CFR 226.61 and 226.62.

Comment, § 226.91(j): There were several comments that pointed out the incorrect reference to the cost principles OMB Circular A–110 in the proposed rule.

Response: The reference has been corrected to the cost principles of OMB Circular A–122.

Comment, § 226.91(k): One comment objected to the proposed requirement that recipients of USAID funded grants and cooperative agreements must have an organization policy in turn requiring recipient employees to state they are not representing USAID and their comments do not necessarily reflect the views of USAID, when speaking, writing, teaching or engaging in promotional efforts regarding USAID funded programs or projects.

Response: This proposed provision has been deleted from the final rule, along with the proposed provision concerning the recipient's employee's use of the USAID Identity on employee business cards and other personally identifying material, § 226.91 (j). As stated above, recipients should consult with their CTOs concerning any use of the USAID Identity by recipient's employees on personally identifying materials such as business cards.

Findings and Certifications

Paperwork Reduction Act of 1995

OMB has determined that the requirements for Apparent Successful Applicants to submit a Branding Strategy and Marking Plan are by virtue of inclusion in this regulation information collections affecting the public within the meaning of the Paperwork Reduction Act. The requirement to submit a Branding Strategy and Marking Plan will not take effect until publication of OMB approval of the collection of information by separate notice in the **Federal Register**.

This notice initiates the public comment period on the collection of information required by the requirement to submit a Branding Strategy and Marking Plan. The proposed information collection consists of the requirement for Apparent Successful Applicants to Submit a Branding Strategy and Marking Plan, defined in this regulation. No record keeping burden is known to result from the proposed collection of information.

Estimated total annual reporting burden for the period January 2006–January 2009 that will result from the collections of information is presented below:

PROJECTED ANNUAL BURDEN DATA

Question	Estimated value
Annual number of expected respondents	500.
Frequency of responses	One time.
Total number of responses expected	500 annually.
Average response time per respondent, including negotiation	8 hours.
Total annual response time for the collection	500 * 8 hour = 4000 hours.

Pursuant to 5 CFR 1320.8. (d)(1), USAID is seeking comment on the above requirement to submit a Branding Strategy and Marking Plan. Specifically, the public is invite to

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Written comments should be sent within 60 days of the date of this notice by email to '*markingnprm@usaid.gov*' or by surface mail to John Niemeyer, Assistant General Counsel, Office of the General Counsel, USAID, Rm. 6.06.95, 1300 Pennsylvania Ave., NW., Washington, DC 20523; telephone: (202) 712–4776 (this is not a toll-free number).

Executive Order 12866—Regulatory Planning and Review

Executive Order 12866, Regulatory Planning and Review, requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the EO 12866. As discussed above, the Office of Management and Budget (OMB) reviewed this rule at USAID's request. This rulemaking implements statutory authority and reflects USAID's response to comments received on the proposed rule published on December 20, 2004 in the **Federal Register** (69 FR 75885–87).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. In accordance with that Act, the USAID Deputy Administrator has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The Agency has determined that these regulations will not have an impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132, ''Federalism,'' requires that Federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. The Agency has determined that this rule does not have federalism implications that require special consultations with state and local government officials.

Intergovernmental Review

This Final Rule affects direct grant programs that are subject to Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to promote federalism by relying on processes developed by state and local governments for coordination and review of proposed Federal financial assistance.

The Agency has concluded that this rule will not create or affect any Federal financial assistance to states. However, to the extent this rule falls under the Order, we intend this document to provide early notification of the Agency's specific plans and actions for the affected programs.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

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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 22 CFR Part 226

Foreign aid, Grant programs, Nonprofit organizations.

■ For the reasons set forth above, 22 CFR part 226 is amended as follows:

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

■ 1. The authority citation for part 226 is revised to read as follows:

Authority: 22 U.S.C. 2381(a) and 2401.

■ 2. Amend § 226.2 by adding the following definitions:

§ 226.2 Definitions

* * * * *

Activity mean a set of actions through which inputs—such as commodities, technical assistance, training, or resource transfers—are mobilized to produce specific outputs, such as vaccinations given, schools built, microenterprise loans issued, or policies changed. Activities are undertaken to achieve objectives that have been formally approved and notified to Congress.

* * * * *

Apparent successful applicant(s) means the applicant(s) for USAID funding recommended for an award after technical evaluation, but who has not yet been awarded a grant, cooperative agreement or other assistance award by the Agreement Officer. Apparent Successful Applicants will be requested by the Agreement Officer to submit a Branding Strategy and Marking Plan. Apparent Successful Applicant status confers no right and constitutes no USAID commitment to an award, which still must be obligated by the Agreement Officer.

* * * * *

Branding strategy means a strategy the Apparent Successful Applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, describing how the program, project, or activity is named and positioned, as well as how it is promoted and communicated to beneficiaries and cooperating country citizens. It identifies all donors and explains how they will be acknowledged. A Branding Strategy is required even if a Presumptive Exception is approved in the Marking Plan.

* * * * *

Commodities mean any material, article, supply, goods or equipment, excluding recipient offices, vehicles, and non-deliverable items for recipient's internal use in administration of the USAID funded grant, cooperative agreement, or other agreement or subagreement.

* * * * *

Marking plan means a plan that the Apparent Successful Applicant submits at the specific request of a USAID Agreement Officer after technical evaluation of an application for USAID funding, detailing the public communications, commodities, and program materials and other items that will visibly bear the USAID Identity. Recipients may request approval of Presumptive Exceptions to marking requirements in the Marking Plan.

* * * * *

Principal officers means the most senior officer in a USAID Operating Unit in the field, *e.g.*, USAID Mission Director or USAID Representative. For global programs managed from Washington but executed across many countries such as disaster relief and assistance to internally displaced persons, humanitarian emergencies or immediate post conflict and political crisis response, the cognizant Principal Officer may be an Office Director, for example, the Directors of USAID/W/ Office of Foreign Disaster Assistance and Office of Transition Initiatives. For non-presence countries, the cognizant Principal Officer is the Senior USAID officer in a regional USAID Operating Unit responsible for the non-presence country, or in the absence of such a responsible operating unit, the Principle U.S Diplomatic Officer in the non-presence country exercising delegated authority from USAID.

* * * * *

Programs mean an organized set of activities and allocation of resources directed toward a common purpose, objective, or goal undertaken or proposed by an organization to carry out the responsibilities assigned to it.

* * * * *

Projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output or a desired result (for example, services from a fully functional water/sewage treatment facility).

* * * * *

Public communications are documents and messages intended for distribution to audiences external to the recipient's organization. They include, but are not limited to, correspondence, publications, studies, reports, audio visual productions, and other informational products; applications, forms, press and promotional materials used in connection with USAID funded programs, projects or activities, including signage and plaques; Web sites/Internet activities; and events such as training courses, conferences, seminars, press conferences and the like.

* * * * *

Subrecipient means any person or government (including cooperating country government) department, agency, establishment, or for profit or nonprofit organization that receives a USAID subaward, as defined in 22 CFR 226.2.

* * * * *

Technical Assistance means the provision of funds, goods, services or other foreign assistance such as loan guarantees or food for work, to developing countries and other USAID recipients, and through such recipients to subrecipients, in direct support of a development objective—as opposed to the internal management of the foreign assistance program. This definition is applicable only to 22 CFR 226.91.

* * * * *

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is ''from the American people.'' The USAID Identity is available on the USAID Web site at *http://www.usaid.gov/branding* and is provided without royalty, license or other fee to recipients of USAID funded grants or cooperative agreements or other assistance awards.

* * * * *

USAID Partner Co-Branding Guide is a USAID produced publication that is provided free of charge to recipients of USAID funded grants or cooperative agreements or other assistance awards or subawards, that details recommended marking practices and provides examples of USAID funded programs, projects, activities, public communications, and commodities marked with the USAID Identity.

* * * * *

3. Add § 226.91 to subpart F, to read as follows:

§ 226.91 Marking.

(a) USAID policy is that all programs, projects, activities, public communications, and commodities, specified further at paragraph (b)–(e) of this section, partially or fully funded by a USAID grant or cooperative agreement or other assistance award or subaward must be marked appropriately overseas with the USAID Identity, of a size and prominence equivalent to or greater than the recipient's, other donor's or any other third party's identity or logo.

(1) USAID reserves the right to require the USAID Identity to be larger and more prominent if it is the majority donor, or to require that a cooperating country government's identity be larger and more prominent if circumstances warrant; any such requirement will be on a case-by-case basis depending on the audience, program goals and materials produced.

(2) USAID reserves the right to request pre-production review of USAID funded public communications and program materials for compliance with the approved Marking Plan.

(3) USAID reserves the right to require marking with the USAID Identity in the event the recipient does not choose to mark with its own identity or logo.

(4) To ensure that the marking requirements ''flow down'' to subrecipients of subawards, recipients of USAID funded grants and cooperative agreements or other assistance awards are required to include a USAID-approved marking provision in any USAID funded subaward, as follows:

> As a condition of receipt of this subaward, marking with the USAID Identity of a size and prominence equivalent to or greater than the recipient's, subrecipient's, other donor's or third party's is required. In the event the recipient chooses not to require marking with its own identity or logo by the subrecipient, USAID may, at its discretion, require marking by the subrecipient with the USAID Identity.

(b) Subject to § 226.91 (a), (h), and (j), program, project, or activity sites funded by USAID, including visible infrastructure projects (for example, roads, bridges, buildings) or other programs, projects, or activities that are physical in nature (for example, agriculture, forestry, water management), must be marked with the USAID Identity. Temporary signs or plaques should be erected early in the construction or implementation phase. When construction or implementation is complete, a permanent, durable sign, plaque or other marking must be installed.

(c) Subject to § 226.91 (a), (h), and (j), technical assistance, studies, reports, papers, publications, audio-visual productions, public service announcements, Web sites/Internet activities and other promotional, informational, media, or communications products funded by USAID must be marked with the USAID Identity.

(1) Any ''public communications'' as defined in § 226.2, funded by USAID, in which the content has not been approved by USAID, must contain the following disclaimer:

> This study/report/audio/visual/other information/media product (specify) is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of [insert recipient name] and do not necessarily reflect the views of USAID or the United States Government.

(2) The recipient shall provide the Cognizant Technical Officer (CTO) or other USAID personnel designated in the grant or cooperative agreement with at least two copies of all program and communications materials produced under the award. In addition, the recipient shall submit one electronic and/or one hard copy of all final

documents to USAID's Development Experience Clearinghouse.

(d) Subject to § 226.91 (a), (h), and (j), events financed by USAID such as training courses, conferences, seminars, exhibitions, fairs, workshops, press conferences and other public activities, must be marked appropriately with the USAID Identity. Unless directly prohibited and as appropriate to the surroundings, recipients should display additional materials such as signs and banners with the USAID Identity. In circumstances in which the USAID Identity cannot be displayed visually, recipients are encouraged otherwise to acknowledge USAID and the American people's support.

(e) Subject to § 226.91 (a), (h), and (j), all commodities financed by USAID, including commodities or equipment provided under humanitarian assistance or disaster relief programs, and all other equipment, supplies and other materials funded by USAID, and their export packaging, must be marked with the USAID Identity.

(f) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request Apparent Successful Applicants to submit a Branding Strategy, defined in § 226.2. The proposed Branding Strategy will not be evaluated competitively. The Agreement Officer shall review for adequacy the proposed Branding Strategy, and will negotiate, approve and include the Branding Strategy in the award. Failure to submit or negotiate a Branding Strategy within the time specified by the Agreement Officer will make the Apparent Successful Applicant ineligible for award.

(g) After technical evaluation of applications for USAID funding, USAID Agreement Officers will request Apparent Successful Applicants to submit a Marking Plan, defined in § 226.2. The Marking Plan may include requests for approval of Presumptive Exceptions, paragraph (h) of this section. All estimated costs associated with branding and marking USAID programs, such as plaques, labels, banners, press events, promotional materials, and the like, must be included in the total cost estimate of the grant or cooperative agreement or other assistance award, and are subject to revision and negotiation with the Agreement Officer upon submission of the Marking Plan. The Marking Plan will not be evaluated competitively. The Agreement Officer shall review for adequacy the proposed Marking Plan, and will negotiate, approve and include the Marking Plan in the award. Failure to submit or negotiate a Marking Plan within the time specified by the Agreement Officer will make the Apparent Successful Applicant ineligible for award. Agreement Officers have the discretion to suspend the implementation requirements of the Marking Plan if circumstances warrant. Recipients of USAID funded grant or cooperative agreement or other assistance award or subaward should retain copies of any specific marking instructions or waivers in their project, program or activity files. Cognizant Technical Officers will be assigned responsibility to monitor marking requirements on the basis of the approved Marking Plan.

(h) Presumptive exceptions: (1) The above marking requirements in § 226.91 (a)–(e) may not apply if marking would:

(i) Compromise the intrinsic independence or neutrality of a program or materials where independence or neutrality is an inherent aspect of the program and materials, such as election monitoring or ballots, and voter information literature; political party support or public policy advocacy or reform; independent media, such as television and radio broadcasts, newspaper articles and editorials; public service announcements or public opinion polls and surveys.

(ii) Diminish the credibility of audits, reports, analyses, studies, or policy recommendations whose data or findings must be seen as independent.

(iii) Undercut host-country government ''ownership'' of constitutions, laws, regulations, policies, studies, assessments, reports, publications, surveys or audits, public service announcements, or other communications better positioned as ''by'' or ''from'' a cooperating country ministry or government official.

(iv) Impair the functionality of an item, such as sterilized equipment or spare parts.

(v) Incur substantial costs or be impractical, such as items too small or other otherwise unsuited for individual marking, such as food in bulk.

(vi) Offend local cultural or social norms, or be considered inappropriate on such items as condoms, toilets, bed pans, or similar commodities.

(vii) Conflict with international law.

(2) These exceptions are presumptive, not automatic and must be approved by the Agreement Officer. Apparent Successful Applicants may request approval of one or more of the presumptive exceptions, depending on the circumstances, in their Marking Plan. The Agreement Officer will review requests for presumptive exceptions for adequacy, along with the rest of the Marking Plan. When reviewing a request for approval of a presumptive exception, the Agreement Officer may review how program materials will be marked (if at all) if the USAID identity is removed. Exceptions approved will apply to subrecipients unless otherwise provided by USAID.

(i) In cases where the Marking Plan has not been complied with, the Agreement Officer will initiate corrective action. Such action may involve informing the recipient of a USAID grant or cooperative agreement or other assistance award or subaward of instances of noncompliance and requesting that the recipient carry out it's responsibilities as set forth in the Marking Plan and award. Major or repeated non-compliance with the Marking Plan will be governed by the uniform suspension and termination procedures set forth at 22 CFR 226.61 and 226.62.

(j) USAID Principal Officers, defined for purposes of this provision at § 226.2, may at any time after award waive in whole or in part the USAID approved Marking Plan, including USAID marking requirements for each USAID funded program, project, activity, public communication or commodity, or in exceptional circumstances may make a waiver by region or country, if the Principal Officer determines that otherwise USAID required marking would pose compelling political, safety, or security concerns, or marking would have an adverse impact in the cooperating country. USAID recipients may request waivers of the Marking Plan in whole or in part, through the Cognizant Technical Officer. No marking is required while a waiver determination is pending. The waiver determination on safety or security grounds must be made in consultation with U.S. Government security personnel if available, and must consider the same information that applies to determinations of the safety and security of U.S. Government employees in the cooperating country, as well as any information supplied by the Cognizant Technical Officer or the recipient for whom the waiver is sought. When reviewing a request for approval of a waiver, the Principal Officer may review how program materials will be marked (if at all) if the USAID Identity is removed. Approved waivers are not limited in duration but are subject to Principal Officer review at any time due to changed circumstances. Approved waivers ''flow down'' to recipients of subawards unless specified otherwise. Principal Officers may also authorize the removal of USAID markings already affixed if circumstances warrant. Principal Officers' determinations regarding waiver requests are subject to

appeal to the Principal Officer's cognizant Assistant Administrator. Recipients may appeal by submitting a written request to reconsider the Principal Officer's waiver determination to the cognizant Assistant Administrator.

(k) *Non-retroactivity.* Marking requirements apply to any obligation of USAID funds for new awards as of January 2, 2006. Marking requirements also will apply to new obligations under existing awards, such as incremental funding actions, as of January 2, 2006, when the total estimated cost of the existing award has been increased by USAID or the scope of work is changed to accommodate any costs associated with marking. In the event a waiver is rescinded, the marking requirements shall apply from the date forward that the waiver is rescinded. In the event of the rescinding of a waiver after the date of completion as defined in 22 CFR 226.2 but before closeout as defined in 22 CFR 226.2., the USAID mission or operating unit with initial responsibility to administer the marking requirements shall make a cost benefit analysis as to requiring USAID marking requirements after the date of completion of the affected programs, projects, activities, public communications or commodities.

(l) The USAID Identity, USAID Partner Co-Branding Guide, and other guidance will be provided at no cost or fee to recipients of USAID grants, cooperative agreements or other assistance awards or subawards. Additional costs associated with marking requirements will be met by USAID if reasonable, allowable, and allocable under the cost principles of OMB Cost Circular A–122. The standard cost reimbursement provisions of the grant, cooperative agreement, other assistance award or subaward should be followed when applying for reimbursement of additional marking costs.

(m) This section shall become effective on January 2, 2006.

Dated: August 17, 2005.

Frederick W. Schieck,

Deputy USAID Administrator.

[FR Doc. 05–16698 Filed 8–23–05; 1:48 pm]

BILLING CODE 6116–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–200524–FRL–7952–3]

Approval and Promulgation of Air Quality Implementation Plans; Chattanooga, TN; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is revising the format of part 52 of Title 40 of the Code of Federal Regulations (40 CFR part 52) for materials submitted by Chattanooga, Tennessee that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the local agency and approved by EPA.

This format revision will affect the ''Identification of Plan'' sections of 40 CFR part 52, by adding a table for the Chattanooga portion of the Tennessee SIP. This revision will also affect the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center, and the Regional Office.

DATES: This action is effective August 26, 2005.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; the EPA, Air and Radiation Docket and Information Center, Air Docket (Mail Code 6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Stacy DiFrank at the above Region 4 address or at (404) 562–9042.

SUPPLEMENTARY INFORMATION: Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA. Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the federally approved SIP and are identified in part 52 ''Approval and Promulgation of Implementation Plans.'' The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is ''incorporated by reference.'' This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968), EPA revised the procedures for incorporating by reference (IBR), into the Code of Federal Regulations, materials submitted by states in their EPA-approved SIP revisions. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing EPA approval of revisions to a SIP, and streamlined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. Pursuant to these revised procedures, EPA is revising the format for identification of the Chattanooga portion of the Tennessee SIP, appearing in 40 CFR part 52. EPA has previously revised the format for the identification of the Tennessee SIP and the Memphis-Shelby County and Knox County portions of the SIP.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and APA section 553(d)(3) which allows an agency to make an action effective immediately

(thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the Chattanooga portion of the Tennessee SIP in Tennessee's ''Identification of Plan'' portion of 40 CFR part 52.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this administrative action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*,) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This administrative action also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these Statutes and Executive Orders for the underlying rules are discussed in previous actions taken on Chattanooga, Tennessee's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). These announced actions were effective when EPA approved them through previous rulemaking actions. 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 this action in the **Federal Register**. This revision to Chattanooga's portion of the Tennessee SIP in the ''Identification of Plan'' section of 40 CFR part 52 is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice-and-comment rulemaking. Prior EPA rulemaking actions for each individual component of the Chattanooga portion of the Tennessee SIP previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

List of Subjects in 40 CFR Part 52

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

Dated: August 4, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Chattanooga, Tennessee

■ 2. Section 52.2220 is amended as follows:

■ a. By revising paragraph (b); and

■ b. adding table 4 in paragraph (c) for Chattanooga, ''EPA Approved Chattanooga Regulations''.

§ 52.2220 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 1, 1998, for Tennessee (Table 1 of the Tennessee State Implementation Plan), January 1, 2003 for Memphis Shelby County (Table 2 of the Memphis Shelby County portion of the Tennessee State Implementation Plan), March 1, 2005, for Knox County (Table 3 of the Knox County portion of the Tennessee State Implementation Plan), and April 1, 2005, for Chattanooga (Table 4 of the Chattanooga portion of the Tennessee State Implementation Plan) and paragraph (d) of this section with an EPA approval date prior to December 1, 1998 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph

(c) of this section with EPA approval dates after December 1, 1998, for Tennessee (Table 1 of the Tennessee State Implementation Plan), January 1, 2003, for Memphis Shelby County (Table 2 of the Memphis Shelby County portion of the Tennessee State Implementation Plan), March 1, 2005, for Knox County (Table 3 of the Knox County portion of the Tennessee State Implementation Plan), and April 1, 2005, for Chattanooga (Table 4 of the Chattanooga portion of the Tennessee State Implementation Plan) and paragraph (d) of this section with an EPA approval date of after December 1, 1998 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the EPA, Air and Radiation Docket and Information Center, Air Docket (Mail Code 6102T), 1200 Pennsylvania Avenue, NW., Washington, DC. 20460 and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) * * *

TABLE 4.—EPA APPROVED CHATTANOOGA REGULATIONS

State section	Title/subject	Adoption date	EPA approval date	Explanation
	Article I. In General			
Section 4–1	Declaration of Policy and Purposes: Title	07/20/89	05/08/90, 55 FR 19066.	
Section 4–2	Definitions	08/16/95	02/18/97, 62 FR 7163.	
Section 4–3	Regulations cumulative; compliance with one provision no defense to noncompliance with another; use of alternative methods.	08/16/95	02/18/97, 62 FR 7163.	
Section 4–4	Penalties for violation of chapter, permit or order	08/16/95	02/18/97, 62 FR 7163.	
Section 4–5	Limitations of chapter	07/20/89	05/08/90, 55 FR 19066.	
Section 4–6	Air pollution control board; bureau of air pollution control; persons required to comply with chapter.	08/16/95	02/18/97, 62 FR 7163.	
Section 4–7	Powers and duties of the board; delegation	07/20/89	05/08/90, 55 FR 19066.	
Section 4–8	Installation permit, temporary operating permit, certification of operation and solid fuel permit.	08/16/95	02/18/97, 62 FR 7163.	
Section 4–9	Technical reports; charges	07/20/89	05/08/90, 55 FR 19066.	
Section 4–10	Records	07/20/89	05/08/90, 55 FR 19066.	
Section 4–11	General Requirements	07/20/89	05/08/90, 55 FR 19066.	
Section 4–12	Limits on emissions due to equipment malfunction, start-up or shutdown.	08/16/95	02/18/97, 62 FR 7163.	
Section 4–13	Certificate of alternate control	12/11/95	08/12/97, 62 FR 43109.	
Section 4–14	Court determination of invalidity of having two sets of limitations for process or fuel burning equipment; effect.	07/20/89	05/08/90, 55 FR 19066.	
Section 4–15	Right to file abatement suits	07/20/89	05/08/90, 55 FR 19066.	
Section 4–16	Right of entry of city employees; search warrants	08/16/95	02/18/97, 62 FR 7163.	
Section 4–17	Enforcement of chapter; procedure for adjudicatory hearings.	08/16/95	02/18/97, 62 FR 7163.	
Section 4–18	Hearings and judicial review	08/16/95	02/18/97, 62 FR 7163.	
Section 4–19	Confidentiality of certain records	08/16/95	02/18/97, 62 FR 7163.	
Section 4–20	Emergencies	07/20/89	05/08/90, 55 FR 19066.	
Section 4–21	Variances	07/20/89	05/08/90, 55 FR 19066.	
Section 4–22	Reserved.			
	Article II. Section 4–41 Rules, Regulations, Criteria, Standards			
Section 4–41 Rule 1	Rules adopted	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 2	Regulation of Nitrogen Oxides	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 3	Visible Emission Regulations	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 4	Regulation of the Importation, Sales, Transportation, Use or Consumption of Certain Fuels.	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 5	Prohibition of Hand-Fired Fuel Burning Equipment	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 6	Prohibition of Open Burning	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 7	Incinerator Regulation	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 8	Fuel Burning Equipment Regulations	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 9	Regulation of Visible Emissions from Internal Combustion Engines.	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 10	Process Emission Regulations	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 11	Regulation of Transporting and Material Handling in Open Air.	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 12	Regulation of Odors in the Ambient Air	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 13	Regulation of Sulfur Oxides	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 14	Nuisances	07/20/89	05/08/90, 55 FR 19066.	

TABLE 4.—EPA APPROVED CHATTANOOGA REGULATIONS—Continued

State section	Title/subject	Adoption date	EPA approval date	Explanation
Section 4–41 Rule 16	Emission Standards for Source Categories of Area Sources.	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 17	General Provisions and Applicability for Process Gaseous Emissions Standards.	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 18	Prevention of Significant Air Quality Deterioration	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 20	Proposed Infectious Waste Rule	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 21	Ambient Air Quality Standards	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 22	(Reserved).			
Section 4–41 Rule 23	General Provisions and Applicability for Process Gaseous Emissions Standards.	07/20/89	05/08/90, 55 FR 19066.	
Section 4–41 Rule 24	(Reserved).			
Section 4–41 Rule 25	General Provisions and Applicability for Volatile Organic Compounds.	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 26	Reasonably Available Control Technology (RACT)	08/15/95	08/12/97, 62 FR 43109.	
Section 4–41 Rule 27	Particulate Matter Controls for New Sources and New Modifications after August 12, 1997.	08/15/95	08/12/97, 62 FR 43109.	

* * * * *

[FR Doc. 05–16932 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–SC–0001, R04–OAR–2005–GA–0001–200516; FRL–7957–1]

Approval and Promulgation of Air Quality Implementation Plans; South Carolina and Georgia; Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the South Carolina and Georgia State Implementation Plans (SIPs), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) and the Georgia Environmental Protection Division (EPD), respectively, for the Early Action Compact (EAC) areas in South Carolina and Georgia. The proposed SIP revisions were submitted on December 29, 2004, by South Carolina and December 31, 2004, by Georgia. There are ten EAC areas in South Carolina and Georgia covered by this final action: the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah EAC Areas. Only the Lower Savannah EAC Area has counties in both South Carolina and Georgia. For the purposes of this document, however, all of the above listed EAC areas will be collectively referred to as the ''South Carolina and Georgia EAC Areas.'' The SIP revisions meet the requirements for the South Carolina and Georgia EAC Areas to attain and maintain the 8-hour ozone national ambient air quality standard (the 8-hour ozone standard) as described in the EAC Protocol and related regulations. EPA is also now approving the photochemical modeling used by South Carolina and Georgia to support the attainment and maintenance demonstrations of the 8-hour ozone standard in the South Carolina and Georgia EAC Areas. The revisions being approved today further incorporate regulatory control measures into the South Carolina SIP, including two Statewide regulations pertaining to control of nitrogen oxide (NO_X) emissions and open burning. In addition, this final action also corrects inadvertent errors in the May 26, 2005, proposal document relating to these SIP revisions (70 FR 30396).

In today's final action, EPA is not finalizing its proposed rulemaking to defer the effective date of the nonattainment designations for EAC areas. In a separate action, published on June 8, 2005, EPA proposed to defer the effective date of the nonattainment deferred designation for EAC areas until December 31, 2006 (69 FR 23858). EPA final action on the deferral is expected to be published before September 30, 2005.

DATES: This rule will be effective September 26, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2005–SC–0001 and R04–OAR–2005–GA–0001. The EAC Protocol can be found in RME ID No. R04–OAR–2005–SC–0001 or R04–OAR–2005–GA–0001. The protocol can also be found at *http://www.epa.gov/air/eac/*. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via

electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Today's Action
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 26, 2005 (70 FR 30396), EPA proposed approval of SIP revisions for the South Carolina and Georgia EAC Areas demonstrating attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm), in these EAC Areas by December 31, 2007.[1] Additional information regarding the SIP revisions being approved today is available in the proposed rule (70 FR 30396, May 26, 2005) and in the Docket for this action. Only two of the ten South Carolina and Georgia EAC Areas, Appalachian and Central Midlands, include counties designated as nonattainment deferred. All of the other counties in the South Carolina and Georgia EAC Areas are designated as unclassifiable/attainment. Additional information regarding the designations process, and the South Carolina and Georgia EAC Area designations, is available in 69 FR 23858 (April 30, 2004).[2] The SIP revisions being approved today are consistent with the requirements established in the EAC Protocol and related regulations.

EPA received public comments for thirty days on the SIP revisions being approved today. Several comments were received and only one opposed the proposal, but for reasons not directly related to the substance of the SIP revisions. These comments are discussed below, in Part III. ''Response to Comments.''

Summary of EAC Process

An EAC is an agreement between a state, local governments, and EPA to implement measures not necessarily required by the Clean Air Act (CAA) in order to achieve cleaner air as soon as possible.[3] Communities close to or exceeding the 8-hour ozone standard that have elected to enter into an EAC have started reducing air pollution at least two years earlier than required by the CAA. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the CAA. In accordance with the EAC Protocol, South Carolina submitted EACs for the South Carolina and Georgia EAC Areas in December, 2002. Georgia submitted materials for the Lower Savannah EAC Area on December 31, 2002. The compacts themselves were signed by state air quality officials in both Georgia and South Carolina, representatives of the local communities, and the Regional Administrator for EPA Region 4. The EAC program was designed for areas that approached or monitored violations of the 8-hour ozone standard, but were in attainment for the 1-hour ozone national ambient air quality standard (the 1-hour ozone standard). The 1-hour ozone standard will be revoked for counties in EAC areas one year after the effective dates of their respective 8-hour ozone designations. See 40 CFR 50.9(b) for additional information on the revocation of the 1-hour ozone standard.

As part of the EAC program, EPA deferred the effective date of the nonattainment designations for EAC areas that were violating the 8-hour ozone standard, but continue to meet the milestones described in the EAC Protocol. Details of this deferral were published in the **Federal Register** on April 30, 2004 (69 FR 23858). On June 8, 2005, EPA proposed to extend the deferred effective date of the nonattainment designations through December 31, 2006 (70 FR 33409), for the EAC areas that have met their obligations. A subsequent action will continue the deferral until December 31, 2007, when attainment evaluations will begin. Pursuant to the EAC Protocol, the designation process is scheduled to be completed by April 15, 2008. To date, the South Carolina and Georgia EAC Areas have met all the EAC milestones. In April, 2008, it is anticipated that EAC areas with air quality monitoring data showing attainment for the years 2005–2007, that have also met all the compact milestones, will be designated attainment for the 8-hour ozone standard. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating state and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using a mix of local, state, and federal measures. All of the measures being approved today as part of the SIP revisions will be mandatory and federally enforceable.

Brief Summary of Control Measures and Modeling

The details of the SIP revisions being approved today are available for review in the RME Docket under ID No. R04–OAR–2005–SC–0001 and R04–OAR–2005–GA–0001. In addition, the measures described below are applied differently to different areas depending on the specific area's designation (*i.e.*, unclassifiable/attainment or nonattainment-deferred). Generally, the SIP revisions include emissions inventory, modeling, control strategies, and maintenance for growth elements as required by the EAC Protocol. With regard to control measures, the South Carolina and Georgia SIP revisions include federal, state, and local control measures. The federal control measures for both states include, among others, Tier 2 vehicle standards and low sulfur fuel, and the NO_X SIP Call for South Carolina.

The state control measures for South Carolina include amendments to State Regulation 61–62, Air Pollution Control Regulations and Standards, that revise State Regulation 61–62.2—Prohibition of Open Burning and add State Regulation 61–62.5, Air Pollution Control Standards, Standard No. 5.2, Control of Oxides of Nitrogen. Additional information regarding these regulatory changes is available in the May 26, 2005, proposal (70 FR 30396) as well as in the Docket for this rulemaking. These two regulations were published in the South Carolina State Register on June 25, 2004, and are now being approved into the South Carolina SIP.

The local control measures being approved into the South Carolina SIP for the South Carolina EAC Areas include, among others, implementing emissions reduction strategies at several facilities, truck stop electrification, and gas can exchange events. The facilities implementing emissions reduction strategies are the Duke Power Lee Steam Station in Anderson County, the Transcontinental Gas Pipeline Corporation in Spartanburg County, and International Paper and SCE&G—Wateree in Richland County. Additional information regarding these and other local measures is available in the May 26, 2005, proposal (70 FR 30396), and the Docket for this rulemaking. Specifically, Appendix 16 of the South Carolina SIP submittal, included in the Docket, contains detailed information on the local measures being approved as part of this final action.

[1] The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

[2] As discussed in the April 30, 2004, designations and the May 26, 2005, proposal for the South Carolina—Georgia SIP revisions, the South Carolina EAC Areas includes counties designated as unclassifiable/attainment and nonattainment-deferred. The specific measures included in the SIP revisions may be different depending on the specific county's designation.

[3] Further information about the EAC program is available in the EAC Protocol and prior **Federal Register** notices available at http://www.epa.gov/air/eac/.

In addition to control measures, the South Carolina SIP revisions also include a maintenance for growth plan that meets and exceeds the minimum requirements of the EAC Protocol for such a plan. The EAC Protocol requires that maintenance be demonstrated through 2012. In summary, the South Carolina plan demonstrates attainment until 2017, commits to a mid-point evaluation in 2012, and commits to develop a second 10-year maintenance plan from 2017–2027, among other elements.

The State of Georgia, as part of the Lower Savannah EAC Area, has also adopted measures that positively impact air quality in that area. This area is designated as unclassifiable/attainment, but still elected to participate in the EAC program. Georgia's statewide control measures include an open burning ban during the ozone season and Stage I Vapor Recovery, among others. The Georgia SIP revisions also demonstrate maintenance through 2012, as required by the EAC Protocol.

The States of South Carolina and Georgia both used a process known as photochemical modeling to evaluate attainment and maintenance of the 8-hour ozone standard. The photochemical modeling performed by South Carolina and Georgia used control measures to model attainment and maintenance of the 8-hour ozone. The South Carolina EAC Areas passed the attainment test for 2007, 2012, and 2017. Consistent with South Carolina's modeling, Georgia's modeling for the Lower Savannah EAC Area (modeled by both South Carolina and Georgia) demonstrates that the Area passed the attainment test for 2007, and 2012. This type of modeling is consistent with the EAC Protocol and EPA Draft Modeling Guidance that was provided to the participating EAC Areas.[4] Additional information regarding the modeling performed by South Carolina and Georgia is available in the Docket, RME ID No. R04–OAR–2005–SC–0001 and R04–OAR–2005–GA–0001.

II. Today's Action

Today, EPA is taking final action, pursuant to sections 110 and 116 of the CAA, 42 U.S.C. 7410 and 7416, to approve revisions to the South Carolina and Georgia SIPs. The SIP revisions being approved today are consistent with the EAC Protocol and related regulations. These revisions demonstrate attainment of the 8-hour ozone standard within the South Carolina and Georgia EAC Areas by 2007, and demonstrate maintenance for five or more years beyond 2007. The revisions being approved today further incorporate regulatory control measures (revisions to state regulations) into the South Carolina SIP.

Additionally, today we are correcting inadvertent errors in the May 26, 2005, proposal to approve the South Carolina and Georgia EAC Area SIP revisions (70 FR 30396). These inadvertent errors included the types of control measures modeled for attainment, the counties included in the Upper Savannah EAC Area, and a typographical error in the table entitled, ''County Level Emission Reductions in South Carolina EAC Nonattainment-Deferred Areas.'' These errors, described in greater detail below, are now being corrected as part of this final action. The corrections below are made to Section VII., ''What Measures are Included in this EAC SIP Submittal,'' and are listed below.

1. Page 30402, 2nd paragraph, 2nd sentence should have read: South Carolina also adopted and made revisions to measures applicable statewide.

2. On page 30403, under the table entitled ''County Level Emission Reductions in South Carolina EAC Nonattainment-Deferred Areas,'' first column, sixth row, ''0.24 lb/mmBTU'' should have read ''0.27 lb/mmBTU.''

3. On page 30403, under the table entitled ''County Level Emission Reductions in South Carolina EAC Nonattainment-Deferred Areas,'' first column, sixth row, the following sentence should have been included:

In addition, the low NO_X burners will be installed and implemented in accordance with the October 18, 2004, letter from Duke Power included in the South Carolina SIP submittal.

4. On page 30404, 1st paragraph, 2nd sentence should have read: There are two counties in Georgia, Richmond and Columbia, participating in the Early Action Compact Program as a part of the Lower Savannah EAC Area.

III. Response to Comments

EPA Region 4 received two comment letters in response to the May 26, 2005, proposal to approve the South Carolina and Georgia EAC Area SIP revisions. Both comments expressed support for the goal of clean air sooner. The first commenter supported EPA's proposal to approve the South Carolina Appalachian EAC Area SIP revisions. The second commenter raised concerns about EPA's proposal to approve the South Carolina and Georgia EAC Area SIP revisions, although the issues raised by this commenter were not directly relevant to the May 26, 2005, proposal.[5]

In the only unsupportive comment received in response to EPA's May 26, 2005, proposal to approve the South Carolina and Georgia EAC Area SIP revisions, the commenter, the New York State Department of Environmental Conservation (NYSDEC), noted its opposition to today's action for two reasons. First, the SIP revisions provide for the deferment of a nonattainment designation until a future date potentially as late as December 31, 2007; second, the revisions relieve the Areas of obligations under Title I, Subpart D of the CAA. These two issues are directly related to EPA's June 8, 2005, proposal to defer the effective date of the nonattainment designations for EAC Areas across the country (70 FR 33409). NYSDEC also raised these same issues in response to EPA's June 8, 2005, deferral proposal. Because the comment relates to deferral issues, and was also submitted on the June 8, 2005, deferral proposal, it will be responded to by EPA in our subsequent rulemaking addressing the deferred effective date for nonattainment designations for EAC areas. When published, this final deferral rule will be available on the EAC Web site *http://www.epa.gov/air/eac/*. Notably, contrary to the comment, today's action by EPA to approve SIP revisions for the States of South Carolina and Georgia neither provides for deferral of the nonattainment designation nor relieves an area from obligations under Title I, Subpart D of the CAA.

IV. Final Action

EPA is approving the revisions to the South Carolina and Georgia SIPs submitted on December 29, 2004, and December 31, 2004, respectively, pursuant to the EAC Protocol and resulting in emission reductions needed to attain and maintain the 8-hour ozone standard in the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah EAC Areas.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and

[4] This guidance can be found at *http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#Guidance*.

[5] EPA notes that the Southern Environmental Law Center (SELC) provided EPA with comments on EPA's June 8, 2005, proposal to defer the effective date of the nonattainment designations for the South Carolina EAC Areas. Because this comment was submitted in response to EPA's proposed deferral action, and not EPA's May 26, 2005, proposal to approve South Carolina's SIP revisions, the comment will be responded to by EPA in our subsequent rulemaking addressing the deferred effective date for the nonattainment designation for South Carolina EAC Areas.

therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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 October 25, 2005. 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 15, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570(e) is amended by adding a new entry 23 at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED GEORGIA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* * * *	*	*	*
23. Attainment Demonstration for the Lower Savannah—Augusta Early Action Compact Area.	Columbia and Richmond Counties.	December 31, 2004.	August 26, 2005. [Insert first page number of publication]
* * * *	*	*	*

Subpart PP—South Carolina

■ 3. Section 52.2120 is amended:

■ a. In paragraph (c) by revising the entry for ''Regulation No. 62.2.''

■ b. In paragraph (c) under Regulation 62.5, by adding a new entry for ''Standard No. 5.2.''

■ c. In paragraph (e) by adding a new entry at the end of the table for ''Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and

Upper Savannah Early Action Compact Areas.''

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal Register Notice
*	*	*	*	*
Regulation 62.2	Prohibition of Open Burning	06/25/04	08/26/05	[Insert first page number of publication].
*	*	*	*	*
Regulation No. 62.5 Air Pollution Control Standards				
*	*	*	*	*
Standard No. 5.2	Control of Oxides of Nitrogen (NO_X)	06/25/04	08/26/05	[Insert first page number of publication].
*	*	*	*	*

(e) * * *

EPA-APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Explanation
*	*	*	*
Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah Early Action Compact Areas.	12/29/04	08/26/05 [Insert first page number of publication].	

[FR Doc. 05–16598 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–TN–0001, R04–OAR–2004–GA–0004–200522; FRL–7956–9]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee and Georgia; Attainment Demonstrations for the Chattanooga, Nashville, and Tri-Cities Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the Tennessee and Georgia State Implementation Plans (SIPs) submitted by the State of Tennessee, through the Department of Environment and Conservation (TDEC) on December 29, 2004, and by the State of Georgia, through the Environmental Protection Division (GAEPD) on December 31, 2004, for the three Early Action Compact (EAC) areas in Tennessee and Georgia: the Chattanooga, Nashville, and Tri-Cities Areas (the Tennessee and Georgia EAC Areas). The Chattanooga EAC Area is the only one of the three with counties in both Tennessee and Georgia; the other two EAC Areas are located entirely within the State of Tennessee. The SIP revisions meet the requirements for the Tennessee and Georgia EAC Areas to attain and maintain the 8-hour ozone national ambient air quality standard (8-hour ozone standard) as described in the EAC Protocol and related regulations. EPA is also now approving the photochemical modeling used by Tennessee and Georgia to support the attainment and maintenance demonstrations of the 8-hour ozone standard in the Tennessee and Georgia EAC Areas.

In this action, EPA is not finalizing its proposed rulemaking to defer the effective date of the nonattainment designations for EAC areas. In a separate action, published on June 8, 2005, EPA proposed to defer the effective date of the nonattainment deferred designation for EAC areas until December 31, 2006 (69 FR 23858). EPA final action on the deferral is expected to be published before September 30, 2005.

DATES: This rule will be effective September 26, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2005–TN–0001 and R04–OAR–2004–GA–0004. The EAC Protocol can be found in RME ID No. R04–OAR–2005–TN–0001. The Protocol can also be found at *http://www.epa.gov/air/eac/*. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section,

Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman, or Scott Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number for Mr. Martin is (404) 562–9036, and the telephone number for Ms. Hoffman is (404) 562–9074. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov*. Ms. Hoffman can also be reached via electronic mail at *hoffman.annemarie@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Today's Action
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 26, 2005, EPA proposed approval of SIP revisions for the Tennessee and Georgia EAC Areas demonstrating attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm), in these areas by December 31, 2007.[1] Additional information regarding the SIP revisions being approved today is available in the proposed rule (70 FR 30389, May 26, 2005) and the Docket for this action. The submitted revisions are consistent with the requirements established in the EAC Protocol and related regulations. For further information on the designation process and the Tennessee and Georgia EAC designations, see 69 FR 23856, April 30, 2004.[2] EPA received one public comment during the thirty day comment period for the SIP revisions being approved today. This comment is discussed below, in Part III., ''Response to Comments.''

In addition, today's action corrects an inadvertent error in the May 26, 2005, proposal to approve the Tennessee and Georgia EAC SIP revisions. In the proposal document, EPA indicated in Table 5 (see 70 FR 30389, 30388) that two local measures were not modeled for the Chattanooga EAC Area. In fact, the two measures were modeled and included as part of the attainment demonstration, and the measures should not appear in Table 5. See Section II., ''Today's Action'' for more details regarding this inadvertent error.

Summary of EAC Process

An EAC is an agreement between a state, local governments, and EPA to implement measures not necessarily required by the Clean Air Act (CAA) in order to achieve cleaner air as soon as possible.[3] Communities close to or exceeding the 8-hour ozone standard, which have elected to enter into an EAC, have started reducing air pollution at least two years sooner than required by the CAA. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the CAA. In accordance with the EAC Protocol, Tennessee submitted EACs for the Chattanooga area, Nashville area, and Tri-Cities area, on December 30, 2002. The State of Georgia submitted materials supporting the Chattanooga EAC on December 24, 2002. The compacts were signed by State air quality officials, representatives of local communities, and the Regional Administrator of EPA Region 4. The EAC program was designed for areas that approached or monitored violations of the 8-hour ozone standard, but that were in attainment for the 1-hour ozone national ambient air quality standard (1-hour ozone standard). The 1-hour ozone standard will be revoked for counties in the EAC areas one year after the effective dates of the counties' respective 8-hour ozone designations. See 40 CFR 50.9(b) for additional information on the 1-hour ozone revocation.

As part of the EAC process, EPA deferred the effective date of the nonattainment designations for EAC areas that were violating the 8-hour ozone standard, but continue to meet the milestones described in the EAC Protocol. Details of this deferral were published in the **Federal Register** on April 30, 2004 (69 FR 23858). On June 8, 2005, EPA proposed to extend the deferred effective date of the nonattainment designations through December 31, 2006 (70 FR 33409), for the EAC areas that have met their obligations. A subsequent EPA action will continue the deferral until December 31, 2007, when attainment evaluations will begin. Pursuant to the EAC Protocol, the designation process is scheduled to be completed by April 15, 2008. To date, the Tennessee and Georgia EAC Areas have met all the EAC milestones. In April, 2008, it is anticipated that EAC areas with air quality monitoring data showing attainment for the years 2005–2007, that have also met all the compact milestones, will be designated attainment for the 8-hour ozone standard. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating state and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using a mix of local, state, and federal measures. All of the measures being adopted today as part of the SIP revisions will be mandatory and federally enforceable.

Brief Summary of Control Measures and Modeling

The details of the SIP revisions being approved today are available for review under RME ID No. R04–OAR–2005–TN–0001 and R04–OAR–2004–GA–0004. In addition, the measures discussed in this paragraph are applied differently to different areas depending on the specific area's designation (*i.e.*, unclassifiable/attainment or nonattainment deferred). Generally, however, the SIP revisions include emissions inventory, modeling, control strategies, and maintenance for growth elements as required by the EAC Protocol. With regard to control measures, the Tennessee and Georgia SIP revisions include Federal, State, and local control measures. The federal control measures include, among others, Tier 2 vehicle standards and low sulfur fuel. The State of Tennessee control measures include, among others, expansion of the Motor Vehicle Inspection and Maintenance (I/M) program, expansion of the Stage I Vapor Recovery program, and a Motor Vehicle Tampering provision. The State of Georgia submittal included two control measures that will be implemented in the Chattanooga EAC Area: an open burning ban during the ozone season and Stage I Vapor Recovery. These

[1] The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

[2] As discussed in the April 30, 2004, designations and the May 26, 2005, proposal for the Tennessee and Georgia SIP revisions, the Tennessee and Georgia EAC Areas include counties designated as unclassifiable/attainment and nonattainment deferred. The specific measures included in the SIP revisions may be different depending on the specific county's designation.

[3] Further information about the EAC program is available in the EAC Protocol and prior **Federal Register** notices available at *http://www.epa.gov/air/eac/*.

statewide measures were enacted through state legislation, but implementation will occur at a local level, through both county and state involvement in implementation and enforcement. The local control measures in both states include, among others, open burning bans and transportation emissions control measures. All of these measures, including the local measures, will be enforceable once they are incorporated into the SIP.

In addition to control measures, the Tennessee and Georgia SIP revisions also include maintenance for growth plans that meet and exceed the requirements of the EAC Protocol for such plans. The EAC Protocol requires that maintenance of the 8-hour ozone standard be demonstrated through 2012. In the SIP revisions being approved today, the States of Tennessee and Georgia modeled maintenance of the 8-hour ozone standard through at least 2012, and until 2017, in some Tennessee EAC Areas.

Both Tennessee and Georgia used a process known as photochemical modeling to evaluate attainment and maintenance of the 8-hour ozone standard. Photochemical modeling performed by Tennessee used the above described control measures, and others, to model attainment and maintenance of the 8-hour ozone standard through 2017, passing the attainment test for 2007, 2012, and 2017. Georgia's SIP revisions model attainment and maintenance through 2012, passing the attainment test for 2007, and 2012. The use of photochemical modeling is consistent with the EAC Protocol and the EPA Draft modeling guidance that was provided to EAC areas.[4] The Chattanooga EAC is a multi-state EAC Area, including counties in Tennessee and Georgia; therefore, an attainment demonstration was developed for the Chattanooga EAC Area by the State of Georgia. According to Georgia's modeling for the Chattanooga EAC Area, maintenance of the 8-hour ozone standard is demonstrated through 2012. For further information on the photochemical modeling performed by Tennessee, please see RME ID No. R04–OAR–2005–TN–0001. For further information on photochemical modeling performed by Georgia, please see RME ID No. R04–OAR–2004–GA–0004.

II. Today's Action

Today we are taking final action to approve revisions to the Tennessee and Georgia SIPs under sections 110 and 116 of the Act, 42 U.S.C. 7410 and 7416. The SIP revisions are consistent with the EAC Protocol and related regulations. Pursuant to the EAC Protocol, the SIP revisions demonstrate attainment of the 8-hour ozone standard within the Tennessee and Georgia EAC Areas by 2007, maintenance for five or more years beyond 2007, and incorporate the control measures developed by these EAC Areas into the Tennessee and Georgia SIPs.

Additionally, today we are correcting inadvertent errors in Table 5 of the proposed rule published on May 26, 2005 (70 FR 30382). The specific corrections apply to Section VII.—''What Measures are Included in this EAC SIP Submittal.'' Table 5—''Additional EAC Local Reductions Not Modeled,'' on page 30387 of the proposal, shows that neither the seasonal open burning ban, nor the Spare the Air Program, was modeled for the Chattanooga EAC Area. These two local control measures were modeled and included in the Chattanooga EAC Area attainment demonstration. Therefore, these measures should not be included in Table 5.

III. Response to Comments

EPA Region 4 received one comment in response to the May 26, 2005, proposal to approve the Tennessee and Georgia SIP revisions. The commenter commended Tennessee and Georgia for taking steps to improve air quality, but noted opposition to today's action for two reasons. First, the SIP revisions provide for the deferment of a nonattainment designation until a future date potentially as late as December 31, 2007; second, the revisions relieve the areas of obligations under Title I, Subpart D of the CAA. These two issues are directly related to the proposed deferral of the nonattainment designation for the Tennessee and Georgia EAC Areas, published on June 8, 2005, (70 FR 33409), and not to today's approval of the SIP revisions. In addition, the same issues were raised by this commenter in response to EPA's June 8, 2005, deferral proposal. Because the comment relates to deferral issues, it will be responded to by EPA in our subsequent rulemaking addressing the deferred effective date for nonattainment designations for EAC areas. When published, this final deferral rule will be available on the EAC Web site *http://www.epa.gov/air/eac/*. Notably, contrary to the comment, today's action neither provides for deferral of the nonattainment designation nor relieves an area from obligations under Title I, Subpart D of the CAA.

IV. Final Action

Today EPA is approving revisions to the Tennessee SIP, submitted on December 29, 2004, and the Georgia SIP, submitted December 31, 2004. These revisions demonstrate attainment of the 8-hour ozone standard within the Tennessee and Georgia EAC Areas by 2007, maintenance of the standard for five or more years beyond 2007, and incorporate the control measures developed by the EAC Areas into the Tennessee and Georgia SIPs.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves 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 does not alter the relationship or the distribution of power

[4] This guidance can be found at *http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#Guidance*.

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

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

The Congressional Review Act, 5 U.S.C. 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 October 25, 2005. 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 15, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570 is amended by:

■ a. In paragraph (c) by revising the entries for: ''391–3–1–.02(2)(pp) Bulk Gasoline Plants''; ''391–3–1–.02(2)(rr) Gasoline Dispensing Facility—Stage I'', ''391–3–1.02(2)(ss) Gasoline Transport Vehicles and Vapor Collection Systems'' and ''391–3–1–.02(5) Open Burning''.

■ b. In paragraph (e) by adding a new entry 22. at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *		* *	*
391–3–1–.02(2)(pp)	Bulk Gasoline Plants	1/08/2005	8/26/2005 [Insert first page number of publication].	
* *	* *		* *	*
391–3–1–.02(2)(rr)	Gasoline Dispensing Facility—Stage I.	1/08/2005	8/26/2005 [Insert first page number of publication].	
391–3–1–.02(2)(ss)	Gasoline Transport Vehicles and Vapor Collection Systems.	1/08/2005	8/26/2005 [Insert first page number of publication]..	
* *	* *		* *	*
391–3–1–.02(5)	Open Burning	1/08/2005	8/26/2005 [Insert first page number of publication].	
* *	* *		* *	*

* * * * *

(e) * * *

EPA APPROVED GEORGIA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
* *	*	*	* *
22. Attainment Demonstration for the Chattanooga Early Action Area.	Walker and Catoosa Counties	December 31, 2004	August 26, 2005. [Insert first page number of publication]

Subpart RR—Tennessee

■ 3. Section 52.2220 is amended by:

■ a. In paragraph (c) under ''Table-1 EPA Approved Tennessee Regulations'' by revising entries for ''1200–3–18–.22,'' ''1200–3–18–.24,'' ''1200–3–29–.02,'' ''1200–3–29–.03,'' ''1200–3–29–04,'' ''1200–3–29–.05,'' ''1200–3–29–.06,'' ''1200–3–29–.07,'' ''1200–3–29–.08,'' ''1200–3–29–.09,'' and ''1200–3–29–.10.''

■ b. In paragraph (c) under ''Table-1 EPA Approved Tennessee Regulations'' by adding in numerical order a new entry for ''1200–3–29–.12.''

■ c. In paragraph (c) under ''Table-1 EPA Approved Tennessee Regulations'' by adding in numerical order a new chapter heading No. ''1200–3–36 Motor Vehicle Tampering'' and entries for ''1200–3–26–.01,'', ''1200–3–26–.02,'', ''1200–3–26–.03,'' ''1200–3–26–.04'' and ''1200–3–26–.05.''

■ d. In paragraph (c) under ''Table 4 EPA Approved Chattanooga Regulations'' by revising the entries for ''Section 4–41 Rule 6 Prohibition of Open Burning'' and ''Section 41 Rule 25.10 Gasoline dispensing facilities—stage 1 vapor recovery,'' and

■ e. In paragraph (e) by adding a new entry at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
	Chapter 1200–3–18 Volatile Organic Compounds			
Section 1200–3–18–.22	Bulk Gasoline Plants	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
* *	* *	*	*	*
Section 1200–3–18.24	Gasoline Dispensing Facility-Stage I and Stage II Vapor Recovery.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
* *	* *	*	*	*
	Chapter 1200–3–29 Light-Duty Motor Vehicle Inspection and Maintenance			
* *	* *	*	*	*
Section 1200–3–29.02	Definitions	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29.03	Motor Vehicle Inspection Requirements.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29–.04	Exemption From Motor Vehicle Inspection Requirements.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29–.05	Motor Vehicle Emission Performance Test Criteria.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29–.06	Motor Vehicle Anti-Tampering Test Criteria.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29–.07	Motor Vehicle Emissions Performance Test Methods.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29–.08	Motor Vehicle Anti-Tampering Test Methods.	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	
Section 1200–3–29–.09	Motor Vehicle Inspection Program ..	12/29/2004	8/26/2005 ..... [Insert first page number of publication].	

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1200–3–29–.10	Motor Vehicle Inspection Fee	12/29/2004	8/26/2005 [Insert first page number of publication].	
Section 1200–3–29–.12	Area of Applicability	12/29/2004	8/26/2005 [Insert first page number of publication].	
* *	* *	*	* *	
	Chapter 1200–3–36 Motor Vehicle Tampering			
1200–03–36–.01	Purpose	12/29/2004	8/26/2005 [Insert first page number of publication].	
1200–03–36–.02	Definitions	12/29/2004	8/26/2005 [Insert first page number of publication].	
1200–03–36–.03	Motor Vehicle Tampering Prohibited	12/29/2004	8/26/2005 [Insert first page number of publication].	
1200–03–36–.04	Recordkeeping Requirements	12/29/2004	8/26/2005 [Insert first page number of publication].	
1200–03–36–.05	Exemptions	12/29/2004	8/26/2005 [Insert first page number of publication].	

* * * * *

TABLE 4.—EPA APPROVED CHATTANOOGA REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Explanation
Section 4–41, Rule 6	Prohibition of Open Burning	12/08/04	8/26/05. [Insert first page number of publication].	
* *	* *		* *	*
Section 4–41, Rule 25	General Provisions and Applicability for Volatile Organic Compounds	12/08/04	8/26/05 [Insert first page number of publication].	
* *	* *		* *	*

* * * * * (e) * * *

EPA APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* *	* *		* *	*
Attainment Demonstrations for Early Action Compact Areas.	Chattanooga, Nashville, and Tri-Cities Early Action Compact Areas	December 31, 2004	August 26, 2005 [Insert first page number of publication].	

[FR Doc. 05–16594 Filed 8–25–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0022; FRL–7959–5]

Limited Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown and Malfunction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes limited approval of revisions to the Texas State Implementation Plan (SIP) concerning excess emissions which we proposed, through the parallel processing mechanism, on May 9, 2005. Specifically, we are finalizing limited approval of revisions to 30 TAC Chapter 101, General Air Quality Rules concerning excess emissions during startup, shutdown, and malfunction (SSM) activities. The action will have the effect of extending the expiration date of certain provisions from June 30, 2005 to no later than June 30, 2006. Texas has made this change to allow for additional time before these provisions expire from the SIP to submit a revised excess emissions rule for our approval into the SIP.

DATES: This rule is effective on September 26, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar of the Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6691, *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

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In this document ''we,'' ''us,'' and ''our'' refer to EPA.

I. Background Information

1. What Actions Are We Taking in This Document?

On May 9, 2005 (70 FR 24348) we proposed limited approval of revisions to the Texas SIP pertaining to excess emissions during SSM activities. See 30 TAC, General Air Quality Rule 101, subchapter F, sections 101.221, 101.222, and 101.223. The currently approved Texas SIP provides that these three provisions of the State rules, that address excess emissions resulting from SSM related activities, will expire by their own terms on June 30, 2005. In granting a limited approval of those provisions of the State rule EPA interpreted those provisions to mean the subsections would expire from the approved SIP on that date (June 30, 2005).

Our May 9, 2005 (70 FR 24348) proposal addressed changes to each of these three provisions which would extend the expiration date to as late as June 30, 2006. Specifically, the State revised each of the three subsections to provide:

> ''This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006.''

See 30 TAC, General Air Quality Rule 101, Subchapter F, subsections 101.221(g), 101.222(h), and 101.223(e).

Today, we are taking final action on the May 9, 2005 (70 FR 24348) proposal. Because we proposed to approve these revisions prior to the time the State completed its state rulemaking process, we compared the final version of the adopted State submission with the submission on which the proposed rulemaking was based. The comparison reveals no changes in the State's final submission. The change we are approving today will, in effect, extend the expiration date of the affected sections from June 30, 2005 to January 15, 2006, unless the State submits a replacement rule to EPA, which would have the effect of extending the expiration date in the SIP to June 30, 2006.

The EPA believes it is important to reiterate our interpretation of the phrase in the State's rule, ''submits a revised version of this section.'' If we receive a SIP submission of a state-adopted revised version of the specified sections prior to January 15, 2006, we will review the submission for completeness in accordance with our completeness regulations. See 40 CFR Part 51, Appendix V. If the State fails to submit an adopted rule by January 15, 2006, or submits a SIP that we determine is incomplete, the existing regulations will expire from the SIP effective January 15, 2006. If we find the submission complete, then the rule will expire from the SIP on June 30, 2006, or at an earlier date if so provided by a replacement rule that we approve into the Texas SIP prior to June 30, 2006.

The EPA intends to work with the State during the State's rulemaking process to identify any issues that would prevent our full approval of the replacement rule. Although we cannot prejudge our ultimate decision on a future SIP submission prior to our review of such revisions and our consideration of any public comments in response to our proposed action on such submission, we will attempt to identify any issues that would prevent our full approval of the replacement rule during the State's rulemaking process and any preliminary discussions we may have with the State.

We are granting limited, rather than full, approval of this SIP submittal. We are granting limited approval of this rule because we granted limited approval of the regulations which are modified by this revision. Although this action will extend the expiration date of sections 101.221, 101.222, and 101.223, the basis for our limited approval of the State's excess emissions rules remains unchanged as explained in our March 30, 2005 (70 FR 16129) rulemaking action.

2. What Documents Did We Use in the Evaluation of This Rule?

The EPA's interpretation of the Act on excess emissions occurring during SSM is set forth in the following documents: a memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;'' EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy

memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 1999 Policy); EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977), and EPA's final rule for Idaho's sulfur dioxide control strategy, 42 FR 58171 (November 8, 1977); and the latest clarification of EPA's policy issued on December 5, 2001. See the policy or clarification of policy at: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

To find the latest Federally approved Texas SIP concerning excess emissions see 70 FR 16129 (March 30, 2005).

3. Who Submitted Comments to Us?

We received written comments on our May 9, 2005 (70 FR 24348) proposed limited approval of the Texas SIP revision. The comments were submitted by the Environmental Integrity Project, Galveston-Houston Association for Smog Prevention, Sierra Club Lone Star Chapter, Blue Skies Alliance, Downwinders at Risk, Community In-Power and Development Association, Public Citizen's Texas Office, and Texas Public Interest Research Group (the Commenters) during the public comment period.

4. What Is Our Response to the Submitted Written Comments?

Our responses to the written comments concerning the proposed May 9, 2005 (70 FR 24348), Texas SIP revision are as follows:

Comment #1: The Commenters agree that we should grant a limited approval of the extended expiration date in subsections 101.221(g) and 101.223(e), but claim that for the following reasons (see Comments #2, 3, and 4) we should disapprove the extension of the expiration date in subsection 101.222(h).

Response to Comment #1: We appreciate the Commenters' support of limited approval of subsections 101.221(g) and 101.223(e). See our responses to Comments #2, 3, and 4 of this document concerning subsection 101.222(h).

Comment #2: The Commenters state that an affirmative defense cannot apply to emissions exceedances of the Federally promulgated performance-based or technology driven standards such as New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAP). While EPA's interpretation of Texas' rules is clear from EPA's statements in the final limited approval (70 FR at 16132), EPA should not approve a revision to the Texas rules unless Texas clarifies on the face of the rule that any affirmative defense does not apply to Federally promulgated performance-based or technology driven standards or other Federal requirements.

Response to Comment #2: We agree that in order to receive a full approval of the rule, Texas needs to revise the rule to make clear that the affirmative defense is not available for violations of Federally promulgated performance-based or technology driven standards such as NSPS and NESHAP. In this action, we are only considering a brief extension of the existing rule for which we issued a limited approval on March 30, 2005. Because the extension of the expiration date is brief, we do not believe the underlying flaws in the rule mandate a disapproval of the extension and that it is appropriate to grant a limited approval of the revised expiration date. However, we note that EPA will not approve any further extensions of the expiration date in the absence of the State correcting the defects in the current rule. See section 1 of our May 9, 2005 (70 FR 24349).

Comment #3: The Commenters state that subsection 101.222(c) exempts excess emissions during scheduled maintenance, startup, and shutdown from permitting requirements, if certain criteria are met, and conclude that such exemptions could jeopardize SIP's ability to attain and maintain compliance with the SIP. In addition, the commenters note that EPA's SSM guidance makes clear that scheduled maintenance, startup and shutdown activities should be accounted for in the plan and design, and an affirmative defense should not be available. The Commenters state that because subsections 101.222(c) and (e) violate the Act and EPA's guidance, EPA cannot approve an extension of the expiration date for these provisions.

Response to Comment #3: We agree with many of the points raised by the Commenters regarding the underlying flaws with subsections 101.222(c) and (e), and those flaws were the basis for our limited, rather than full approval of the State's excess emissions rules. See section 3 of our March 30, 2005 (70 FR 16130–16131).

However, we do not think the brief extension of the expiration date at issue here will have a significant effect and that it is appropriate to grant a limited approval of the revised expiration provision. As noted above, however, we will not grant any further extensions of the expiration date in the absence of a submitted SIP revision correcting the defects in the rule. See section 1 of our May 9, 2005 (70 FR 24349).

Comment #4: The Commenters state that because subsections 101.222(b) and (d) limit the ability of citizen and EPA enforcement, EPA cannot approve the extension of the expiration date for these provisions under section 101.222(h).

Response to Comment #4: In part, we based our rationale for a limited, rather than a full, approval of Texas SSM rule on concerns similar to those expressed by the Commenters. See our explanation at 70 FR 16130. As provided above, however, we do not believe these flaws with the rule for which we granted a limited approval mandate that we disapprove the brief extension of the expiration date.

This concludes our responses to the written comments we received during public comment period concerning May 9, 2005 (70 FR 24348), Texas proposed SIP revision.

5. What Areas in Texas Will These Rule Revisions Affect?

These rule revisions affect all sources of air emissions operating within the State of Texas that are subject to emission reduction requirements under the State's SIP approved regulations.

II. Final Action

Today, we are finalizing limited approval of the deletion of existing SIP subsections 101.221(g), 101.222(h), and 101.223(e) and the addition of revised subsections 101.221(g), 101.222(h), and 101.223(e) into the Texas SIP. We published the proposal for this limited approval on May 9, 2005 (70 FR 24348).

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves 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 does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Excess emissions, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 10, 2005.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended by revising the entries for sections 101.221, 101.222, and 101.223 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State, approval/, submittal, date	EPA approval date	Explanation
* * *	*	*	*	*
Chapter 101—General Air Quality Rules				
* * *	*	*	*	*
Subchapter F—Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities				
* * *	*	*	*	*
Section 101.221	Operational Requirements	06/03/05	08/26/05, [Insert FR citation from published date].	With Expiration Date.
Section 101.222	Demonstrations	06/03/05	08/26/05, [Insert FR citation from published date].	With Expiration Date.
Section 101.223	Actions to Reduce Excessive Emissions.	06/03/05	08/26/05, [Insert FR citation from published date].	With Expiration Date.
* * *	*	*	*	*

[FR Doc. 05–16933 Filed 8–25–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX 126–1–7690; FRL–7960–4]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Dallas-Fort Worth Voluntary Mobile Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Texas. This revision approves the Dallas-Fort Worth (DFW) Voluntary Mobile Emission Reduction Program (VMEP) which is relied upon to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the DFW nonattainment area.

DATES: This rule is effective on September 26, 2005.

ADDRESSES: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD–L), 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** paragraph below or Mr. Bill Deese at 214–665–7253 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.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number 214–665–7263; e-mail address *rennie.sandra@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline of Topics

I. What Action Is EPA Taking and Why?
II. What Are the Federal Requirements?
III. What Is the Background for This Action?
IV. What Did the State Submit?
V. What Does the DFW VMEP Include?
VI. What Comments Did EPA Receive in Response to the January 18, 2001, Proposed Rule?
VII. EPA's Final Rulemaking Action
VIII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking and Why?

We are approving the DFW VMEP into the Texas SIP. We are taking this action because the State submitted a SIP revision that relies on the VMEP to achieve the NAAQS in the DFW ozone nonattainment area.

II. What Are the Federal Requirements?

Section 172 of the Act provides the general requirements for nonattainment plans. Section 172(c)(6) and section 110 require SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Today's action involves approval of one of a collection of controls adopted by the State to achieve the ozone standard in the DFW nonattainment area as required under section 172. EPA approval of this SIP revision is governed by section 110 of the Act.

III. What Is the Background for This Action?

In the **Federal Register** published on January 18, 2001 (66 FR 4756) we proposed to approve a Voluntary Mobile Emissions Reduction Program (VMEP) in nine counties (including the DFW 4-county area) as local initiatives. The counties are Collin, Dallas, Denton, and Tarrant along with the surrounding counties of Ellis, Johnson, Kaufman, Parker, and Rockwall.

Voluntary mobile source strategies that attempt to complement existing regulatory programs through voluntary, non-regulatory changes in local transportation activities or changes in in-use vehicle and engine composition constitute the VMEP. EPA concludes that the Clean Air Act allows SIP credit for new approaches to reducing mobile source emissions. This flexible approach is consistent with section 110. Up to 3% of the total future year emissions reductions required to attain the appropriate NAAQS may be claimed under the VMEP policy.[1]

Specifically, the guidance suggests key points be considered for approval of credits. The credits should be quantifiable, surplus, enforceable, permanent, and adequately supported. The State must timely assess and backfill any shortfall pursuant to enforceable commitments in the SIP in the event that the projected emission reductions are not achieved. In addition, VMEPs must be consistent with attainment of the standard and with the Rate of Progress requirements and not interfere with other Clean Air Act requirements.

IV. What Did the State Submit?

The State submitted program descriptions that projected emission reductions attributable to each specific voluntary program. These program descriptions were included in the DFW 1-hour ozone SIP revision submitted April 25, 2000.

V. What Does the DFW VMEP Include?

The following Table lists the programs and projected credits. Programs submitted with no credit assigned are also listed.

VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED

Program type	VOC benefits (tons per day)	NO_X benefits (tons per day)
Alternative Fuel Program	0.18	0.18
Employee Trip Reduction	0.29	0.53
Public Education Campaign/Ozone Season Fare Reduction	0.08	0.15

[1] Memorandum from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, dated October 24, 1997, entitled ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs).''

VOLUNTARY MOBILE EMISSION REDUCTION PROGRAMS AND CREDITS CLAIMED—Continued

Program type	VOC benefits (tons per day)	NO_X benefits (tons per day)
Tier II Locomotive Engines	0–0.6	0–3.0
Vehicle Retirement Program/Vehicle Maintenance *	0.56	0.77
Sustainable Development		
Non-Road Ozone Season Reductions		
Off-Road Heavy Duty Diesel Engine Retrofits		
Total Benefits (tpd)	1.11–1.71	1.63–4.63

*Emission benefits quantified for the Vehicle Retirement Program only. Emission benefits for Vehicle Maintenance are credited in the Vehicle Inspection and Maintenance Program.

The State commits to evaluating each program to validate estimated credits, to evaluating and reporting on the program implementation and results, and to timely remedy any credit shortfall. The State also commits to additional Transportation Control Measures (TCMs) that can be substituted for any shortfall in credit from the estimated credits for VMEP. These include Signal Improvements and Freeway Corridor Management.

EPA's analysis of all the VMEP measures shows that each creditable measure could be quantified. The reductions are surplus by not being substitutes for mandatory, required emission reductions. The SIP with voluntary measures is enforceable because the state has committed to fill any shortfall in credit, thus any enforcement will be against the State. The reductions will continue at least for as long as the time period in which they are used by a SIP demonstration, so they are considered permanent. Each measure is adequately supported by personnel and program resources for implementation. The State's goal is 5.0 tons per day of NO_X benefit from the VMEP program.

VI. What Comments Did EPA Receive in Response to the January 18, 2001, Proposed Rule?

Comments were submitted by the Natural Resources Defense Council (NRDC).

Comment: The NRDC supports the objectives of the voluntary initiatives identified in the proposal. They hope that greater employment of these measures will promote greater public awareness of the area's severe air pollution problems and that these measures will bring about emissions reductions that will lead to healthy air.

Response: We appreciate the positive comments about the voluntary initiatives in the VMEP.

Comment: EPA's VMEP guidance document is not consistent with the Clean Air Act (CAA).

Response: In the final decision on October 28, 2003, by the United States Court of Appeals, Fifth Circuit, the Court said EPA's VMEP policy is a reasonable interpretation of the statute. [*See BCCA Appeal Group* v. *EPA*, 355 F.3 817 (5th Cir. 2003)]. EPA determined and the Court agreed, ''* * * that Texas had made the required commitments to monitor, assess, report, and remedy any credit shortfall from the VMEP measures in accordance with EPA guidance and that these commitments satisfied the enforceability requirements of the CAA.'' *Id*, at 847. Therefore, the VMEP guidance, which is part of the VMEP policy is consistent with the CAA.

Comment: EPA's proposed approval of VMEP Measures for SIP credit is unlawful. The identified voluntary measures, or any voluntary measures do not provide the certainty, enforceability, quantifiability, replicability, permanency, and accountability required for SIP attainment demonstrations.

Response: EPA disagrees with the comment, and continues to believe that the voluntary measures proposed by Texas for inclusion in the SIP are approvable under the Act. EPA acknowledges that by themselves the measures would not be approvable, because as noted by the commenter they are not enforceable against the entities producing the emissions reductions and thus do not meet the enforceability requirement of section 110(a)(2)(A). However, EPA did not propose to approve the measures by themselves. EPA proposed to approve them only in conjunction with an enforceable commitment by the state of Texas to monitor implementation of the voluntary measures, determine whether the anticipated reductions from the measures were in fact achieved, and if not to either alter the program such that the requisite reductions will be achieved, adopt substitute measures, or demonstrate that the attainment and maintenance goals of the ozone SIP can still be met without the reductions from these measures. Thus, EPA did not propose to approve voluntary measures as satisfying the enforceability requirements of section 110. Rather, EPA proposed to approve the voluntary programs into the SIP as part of the overall attainment plan, and proposed to approve the state's enforceable commitment to monitor, assess, and rectify any shortfall as meeting the enforceability requirements of the Act.

EPA continues to believe that this approach is a proper means of encouraging implementation of innovative mobile source control measures while providing an enforceable SIP backstop measure. Ideally, the voluntary measures will produce the estimated emissions reductions without need for any state backfill or Federal or citizen enforcement. However, should any shortfall result, Texas will be bound by the enforceable SIP commitment to rectify the problem and supply the necessary emissions reductions. Both EPA and private citizens retain all of their rights under sections 113 and 304 to bring appropriate enforcement pressure to bear against the state should Texas fail to monitor, assess or fill any shortfall in emissions reductions resulting from implementation of the voluntary measures in the SIP. Contrary to the commenter's allegations, the emissions reductions associated with the voluntary measures in the Dallas SIP are required to be achieved; it is however the state and not the individuals implementing the voluntary measures who must ultimately produce them.

Comment: The commenter raises numerous arguments concerning the unenforceability of the voluntary measures, which will be addressed below. However, the commenter makes no mention of the enforceable State commitment other than to refer to it as insufficient. This statement without further explanation does not give EPA any guidance on the alleged inadequacy

of the commitment nor how the commenter would have EPA improve upon it.

Response: EPA continues to maintain that the commitment is approvable as meeting the enforceability requirements of the Act. In the past, EPA has often approved enforceable state commitments to take future actions under the SIP, and these actions have been enforced by courts against states that have failed to comply with those commitments. *See, Trustees for Alaska* v. *Fink*, 17 F.3d 1209 (9th Cir. 1994); *Coalition Against Columbus Center* v. *City of New York*, 967 F.2d 764 (2d Cir. 1992); *Citizens for a Better Environment* v. *Deukmejian*, 731 F.Supp. 1448, reconsideration granted in part, 746 F.Supp. 976 (N.D. Cal. 1990); *American Lung Ass'n of New Jersey* v. *Keane*, 871 F.2d 319 (3d Cir. 1989); *NRDC* v. *New York State Department of Environmental Conservation*, 668 F.Supp. 848 (S.D.N.Y. 1987); *Council of Commuter Organizations* v. *Gorsuch*, 683 F.2d 648 (2d Cir. 1982) and *Friends of the Earth* v. *EPA*, 499 F.2d.-1118 (2d Cir. 1974) . EPA believes that the Texas commitments associated with the voluntary measures portion of the SIP are similarly enforceable and thus approvable.

Comment: The commenter alleges that the Act requires all control measures to be enforceable against individual polluters and not just against states.

Response: Many mobile source control measures are enforceable only against the state or local transit operator, and not the individual entities actually producing the emissions reductions, *e.g.*, state obligations to establish vehicle inspection and maintenance programs or to purchase buses or expand transit systems. The Clean Air Act does not require Federal enforcement capability against individual vehicle owners or transit users prior to approval of such programs into the SIP.[2]

Comment: The commenter alleges that the public cannot adequately monitor implementation of the voluntary measures nor determine whether the emissions reductions are achieved.

Response: Texas is required by its enforceable commitment to do just that, and will make such assessments available to the public in the normal course of administrative practice. The VMEP measures adopted by the state covering the Dallas-Fort Worth nonattainment area are available to the public on the agency's Web site. Citizens may check on the measures enacted by the TCEQ at the following link: *http://www.tnrcc.state.tx.us/oprd/sips/sipdfw.html.*

Paper copies are also available upon request by contacting Ms. Kelly Keel of the Air Quality Planning and Implementation Division at the TCEQ's Chief Engineer's Office. Ms Keel may be reached at 512–239–3607 or *kkeel@tceq.state.tx.us.*

Because VMEP measures are local initiatives, citizens may check on the implemenation of each measure by contacting the region's transportation planners, the North Central Texas Council of Governments (NCTCOG). VMEP measures are proposed and implemented by local sponsors.

Comment: The commenter also claims that the state itself has raised concerns about the emissions reductions that will be achieved from these measures.

Response: Such concerns may be valid, but notwithstanding Texas has made a commitment to fill any shortfall in emissions, which both EPA and citizens can enforce under the Act. The State relies on reports from the NCTCOG regarding implementation of each VMEP measure. The TCEQ has received no reports from the NCTCOG regarding problems with implementing the VMEP measures enacted in the SIP. Therefore, the State does not believe there is a gap that needs to be backfilled with other emission reduction measures.

Comment: The commenter makes various arguments about the unacceptability of the voluntary measures program stemming from the stationary source permitting program under Title V of the Act.

Response: Title V is totally irrelevant to these mobile source programs. The voluntary measures program Texas has included in the Dallas SIP applies only to mobile sources that are not subject to regulation under the Title V stationary source permitting program.

Comment: The commenter also argues that EPA can not alter its past interpretations without completing notice-and-comment rulemaking.

Response: EPA believes that this action is consistent with its past interpretations that enforceable state commitments to take future action are approvable SIP measures. For example, see EPA actions approving California plans at 62 FR 1150 (January 8, 1997) and 65 FR 18903 (April 10, 2000), and the Houston Attainment Demonstration at 66 FR 57160 (November 14, 2001). In addition, this action is consistent with the guidance cited in section IV of this document that EPA issued in 1997 indicating its belief that voluntary programs could be approved in conjunction with enforceable state commitments to fill any resultant shortfall. The individual SIP approval actions implementing the VMEP guidance constitute the notice-and-comment rulemaking required to effectuate action under the guidance. Thus, this SIP rulemaking satisfies both CAA and APA rulemaking requirements with respect to final interpretations of the Act consistent with the guidance.

Comment: The commenter alleges that EPA may not alter interpretations of the Administrator through SIP rulemaking signed by the Regional Administrator.

Response: The Administrator has properly delegated the authority for SIP rulemakings to the Regional Administrators under Delegation 7–10 dated May 6, 1997, and section 301(a)(1) of the Act. Thus, the Regional Administrators are authorized to act for the Administrator with respect to all matters pertaining to SIP approvals, including interpretations of the Act relevant to a given SIP approval. Additionally, as we stated in the previous response, this action is consistent with EPA's past interpretations that enforceable state commitments to take future action are approvable SIP measures. Compliance with voluntary programs is ensured through the enforceable state commitments to fill any resultant shortfall.

Comment: The commenter questions the 3% limit on voluntary measures, arguing that this limit itself implicitly acknowledges that such measures are not approvable.

Response: EPA did not impose the 3% limit because it believed the measures to be suspect, but rather, as noted in the VMEP guidance, based this decision on the innovative nature of the measures and the agency's lack of experience both with implementation and calculating appropriate credit for such measures. Therefore, EPA created the 3% limit as a policy matter, indicating in the guidance that it did not think it would be appropriate to approve a greater percentage while the agency begins to implement the program. EPA further indicated that it would reassess the limit after several years of experience with the program. Since all VMEP measures would be approved only with enfoceable state commitments to fill any resultant shortfall, EPA felt confident that including voluntary programs up to 3% of required emissions reductions in SIPs would not jeopardize attainment

[2] The Act does require that enhanced I/M programs include state enforcement through denial of vehicle registration without proof of compliance with inspection requirements. However, the enforceable SIP requirement is to develop a program that includes registration denial, and any enforcement would be against the state for failing to deny registration. The Act does not contemplate enforcement actions against individual vehicle owners attempting to register their vehicles.

and maintenance goals during initial implementation under the policy. Further, EPA did not indicate that 3% of required emissions reductions could be considered *de minimis*, as the commenter implies. EPA agrees with the commenter that it should not conclude in advance that any given percentage of emissions reduction could be considered per se *de minimis* for all areas and types of SIPs. Any conclusion about the *de minimis* nature of required emission reductions should be made in light of the specific circumstances of the areas and CAA requirements at issue. Therefore, all of the commenter's arguments relating to the availability of a *de minimis* exemption and the need for notice-and-comment rulemaking to effectuate it are not relevant to EPA's approval of the voluntary measures in the Dallas SIP.

Comment: NRDC claims the record is insufficient to support our credit claims.

Response: EPA reviewed the documentation for each measure of the VMEP. We found that for each measure the documentation was acceptable to demonstrate that the criteria for approval were met. For each measure the State was able to show that the measure plus the State commitment was quantifiable, surplus, enforceable, permanent, and adequately supported. In addition this SIP contained a firm commitment to cover any shortfall by supplementing additional TCMs that are in addition to those already credited to the SIP.

Comment: In its conclusion the commenter refers in passing to delays that may result from identifying and rectifying emissions shortfalls.

Response: EPA acknowledges that reductions will be somewhat delayed where states must first monitor and assess implementation and subsequently implement corrections. For this reason EPA indicated in the VMEP guidance that states should fill any shortfalls in a timely fashion. EPA issued a companion voluntary measures policy for stationary sources.[3] In that policy EPA indicated that where voluntary measures were included in attainment or rate of progress SIPs, any shortfalls would have to be filled prior to the relevant attainment or progress milestone date. EPA believes this is an appropriate interpretation of the requirement to fill shortfalls in a timely fashion under the VMEP policy. Similarly, the same process is described in the recently issued umbrella policy for use of voluntary measures in SIPs.[4]

VII. EPA's Final Rulemaking Action

The DFW VMEP meets the criteria for credit in the SIP. The State has shown that the credits are quantifiable, surplus, enforceable, permanent, adequately supported, and consistent with the SIP and the Act. We are granting final approval of the VMEP into the DFW SIP.

VIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves 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 does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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 October 25, 2005. 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).)

[3] Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, dated January 19, 2001, entitled ''Stationary Source Voluntary Measures Final Policy.''

[4] ''Incorporating Voluntary Measures in a State Implementation Plan,'' September 2004.

List of Subjects in 40 CFR Part 52

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

Dated: August 12, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
*	*	*	*	*
Voluntary Mobile Emission Program.	Dallas/Fort Worth, TX	4/25/00	8/26/05, [*Insert FR page number where document begins*].	

[FR Doc. 05–17030 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R10–OAR–2005–WA–0005; FRL–7959–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Wallula, WA, Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is taking final action to approve a PM_{10} State Implementation Plan (SIP) maintenance plan revision for the Wallula, Washington nonattainment area and to redesignate the area from nonattainment to attainment. PM_{10} air pollution is suspended particulate matter with a nominal diameter less than or equal to a nominal ten micromenters. We are approving the maintenance plan revision and redesignation request because the State has adequately demonstrated that the control measures being implemented in the Wallula area will result in maintenance of the PM_{10} National Ambient Air Quality Standards and that all other requirements of the Clean Air Act for redesignation to attainment have been met.

DATES: Effective September 26, 2005.

ADDRESSES: Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations: EPA, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air, Waste, and Toxics (AWT–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–6706.

SUPPLEMENTARY INFORMATION:

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I. What Is the Background of This Rulemaking?
II. What Comments Did We Receive on the Proposed Action?
III. What Is Our Final Action?
IV. Statutory and Executive Order Reviews

I. What Is the Background of This Rulemaking?

On July 1, 2005, we proposed to approve a State Implementation Plan (SIP) maintenance plan revision and redesignation request, dated March 29, 2005, from the Director of the Washington State Department of Ecology (Ecology) for the Wallula PM–10 nonattainment area. 70 FR 38073. We proposed our approval based on the State's demonstration that the control measures being implemented in the Wallula area would result in maintenance of the PM_{10} National Ambient Air Quality Standards and that all other Clean Air Act requirements for redesignation to attainment have been met. See the proposed action for a full description of how the maintenance plan and redesignation request meet Clean Air Act requirements.

II. What Comments Did We Receive on the Proposed Action?

EPA provided a 30-day review and comment period on the proposal published in the **Federal Register** on July 1, 2005 (70 FR 38073). We received no comments on our proposed rulemaking.

III. What Is Our Final Action?

We are taking final action to approve the Wallula PM_{10} maintenance plan and redesignate the Wallula nonattainment area to attainment for PM_{10}.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves 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 does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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 October 25, 2005. 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, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 12, 2005.

Julie M. Hagensen,

Acting Regional Administrator, Region 10.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart WW—Washington

■ 2. Section 52.2475(e)(2)(ii) is revised to read as follows:

§ 52.2475 Approval of plans.

(e) * * *

(2) * * *

(ii) EPA approves, as a revision to the Washington State Implementation Plan, the Wallula PM_{10} maintenance plan, adopted by the Washington Department of Ecology on March 29, 2005 and submitted to EPA.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.348, the table entitled ''Washington—PM–10'' is amended by revising the entry for ''Walla Walla and Benton Counties, Wallula'' to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Walla Walla and Benton Counties				
Wallula				
The area bounded on the south by a line from UTM coordinate 5099975mN, 362500mE, west to 5099975mN, 342500mE, thence north along a line to coordinate 5118600mN, 342500mE, thence east to 5118600mN, 362500mE, thence south to the beginning coordinate 5099975mN, 362500mE.	September 26, 2005.	Attainment.		
* * *	*	*	*	*

* * * * *

[FR Doc. 05–16929 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–4064–IFC3]

RIN–0938–AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to a Correcting Amendment

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

ACTION: Correcting amendment.

SUMMARY: This correcting amendment corrects a technical error in the correcting amendment that appeared in the **Federal Register**, entitled ''Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule.''

DATES: *Effective Date:* This correcting amendment is effective September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Arrah Tabe-Bedward, (410) 786–7129.

SUPPLEMENTARY INFORMATION:

I. Background

We have identified a technical error that appeared in a correcting amendment entitled ''Medicare Program; Changes to the Medicare Claims Appeal Procedures: Correcting Amendment to an Interim Final Rule.'' (70 FR 37700, June 30, 2005) In this correcting amendment, we are correcting that technical error.

II. Correction of Error

A. Technical Correction to the Regulations Text

In § 405.1020 of the regulation text, we incorrectly stated the section's title as ''Time frames for deciding an appeal for a hearing before an ALJ.'' It should have read, ''Time and place for a hearing before an ALJ.'' We correct this technical error in section B of this correcting amendment.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. However, we can waive this procedure if we find good cause for doing so, and incorporate a statement of this finding and the reasons for it into the rule. A finding that a notice and comment period is impracticable, unnecessary, or contrary to the public interest constitutes good cause for waiving this procedure.

We believe that it is unnecessary to seek public comment on the correction of this editorial error. Further, it is in the public's interest to correct this editorial error because it makes the section more understandable to parties pursuing Medicare appeals under these procedures. Therefore, we find good cause to waive notice and comment procedures.

(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)

Correction of Regulation Text Error

■ Accordingly, 42 CFR chapter IV is corrected by making the following correction to part 405:

PART 405—[CORRECTED]

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)) and Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

§ 405.1020 [Corrected]

■ 2. Section 405.1020 is amended by revising the section title to read as follows:

§ 405.1020 Time and place for a hearing before an ALJ.

* * * * *

Dated: August 16, 2005.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 05–16711 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–2210–IFC]

RIN 0938–AO04

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2005

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period sets forth the methodology used to compute State allotments that are available to pay Medicare Part B premiums for qualifying individuals, allows changes to the State allotments and describes the methodology used to determine the changes to each State's allotment.

DATES: *Effective date:* These regulations are effective August 26, 2005 for allotments for payment of Medicare Part B premiums from the allocation for fiscal year 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–2210–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By 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–2210–IFC, P.O. Box 8011, Baltimore, MD 21244–8011.

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–2210–IFC, 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 FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786–0693.

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–2210–IFC 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 electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1 800–743–3951.

SUPPLEMENTARY INFORMATION:

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

Section 1902 of the Social Security Act (the Act) sets forth the requirements for State plans for medical assistance. Prior to August 5, 1997, section 1902(a)(10)(E) of the Act specified that the State Medicaid plan must provide for some or all types of Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below the Federal poverty line (FPL) and resources below $4,000 for an individual and $6,000 for a couple. A SLMB is an individual who meets the QMB criteria, except that his or her income is above 100 percent of the FPL and does not exceed 120 percent of the FPL. A QDWI is a disabled individual who is entitled to enroll in Medicare Part A under section 1818A of the Act, whose income does not exceed 200 percent of the FPL for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income (SSI) program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

Section 4732 of the Balanced Budget Act of 1997 (BBA), enacted on August 5, 1997, amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of the Medicare Part B premiums for two additional eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs). Specifically, a new section 1902(a)(10)(E)(iv)(I) of the Act was added, under which States must pay the full amount of the Medicare Part B premium for qualifying individuals who would be QMBs but for the fact that their income level is at least 120 percent of the FPL but less than 135 percent of the FPL for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan. The second group of QIs added under section 1902(a)(10)(E)(iv)(II) of the Act includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan. These QIs were eligible for only a portion of Medicare cost sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Coverage of the second group of QIs ended on December 31, 2002 and the 2003 Welfare Reform Bill (Pub. L. 108–89) eliminated reference to the QI–2 benefit. In each of the years 2002 and 2003, Continuing Resolutions extended the coverage of the first group of QIs (whose income is at least 120 percent but less than 135 percent of the Federal poverty line) through the next fiscal year, but maintained the annual funding at the FY 2002 level. In 2004, ''A Bill to Amend Title XIX of the Social Security Act to Extend Medicare Cost-Sharing for the Medicare Part B Premium for Qualifying Individuals'' (Pub. L. 108–448) continued coverage of this group through September 30, 2005, again with no change in funding.

The BBA also added a new section 1933 to the Act to provide for Medicaid payment of Medicare Part B premiums for QIs. (The previous section 1933 was re-designated as section 1934.) Section 1933(a) specifies that a State plan must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that States must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State must permit all qualifying individuals to apply for assistance and must select individuals on a first-come, first-served basis (that is, the State must select QIs in the order in which they apply). Under section 1933(b)(2)(B) of the Act, in selecting persons who will receive assistance in years after 1998, States must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be (or become) QIs. Under section 1933(b)(4) of the Act, persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's

allotment is limited by law, section 1933(b)(3) of the Act provides that the State must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums for QIs each fiscal year and specifies the formula that is to be used to determine an allotment for each State from this total amount. For States that executed a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002. In 1999, the Department published a notice (64 FR 14931, March 29, 1999) to advise States of the methodology used to calculate allotments and each State's specific allotment for that year. Following that notice, there was no change in methodology and States have been notified annually of their allotments. We did not include the methodology for computing the allocation in our regulations. Although the BBA originally provided coverage of QIs only through FY 2002, through several continuing resolutions, coverage has been continued through the current fiscal year, but without any increase in total allocation over the FY 2002 level.

The Federal medical assistance percentage for Medicaid payment of Medicare Part B premiums for qualifying individuals is 100 percent for expenditures up to the amount of the State's allotment. No Federal funds are available for expenditures in excess of the State allotment amount. The Federal matching rate for administrative expenses associated with the payment of Medicare Part B premiums for QIs remains at the 50 percent matching level. Federal financial participation in the administrative expenses is not counted against the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State that is to be based on each State's share of the Secretary's estimate of the ratio of: (a) An amount equal to the total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty line, and who are not otherwise eligible for Medicaid, to (b) the sum of all those individuals for all eligible States.

In FY 2005, some States have exhausted their current allotments before the end of the fiscal year, which has caused them to deny benefits to eligible persons under section 1933(b)(3) of the Act, while other States project a surplus in their allotments. We asked those States which have exhausted or expect to exhaust their FY 2005 allotments before the end of the fiscal year to project the amount of funds that would be required to grant eligibility to all eligible persons in their State, that is, their need. We also asked those States which do not expect to use their full allotments in FY 2005 to project the difference between the amount they expect to spend and their allotment, that is, their surplus. All States reported these figures, and it was evident that the total surplus exceeds the total need. In spite of there being adequate overall funding for the QI benefit, some eligible individuals are being denied benefits due to the allocation methodology used to determine the FY 2005 allotments. We believe that it is the clear intent of the statute to provide benefits to eligible persons up to the full amount of funds made available for the program. We attribute this to imprecision in the data which we used to provide States with their initial allocations under section 1933 of the Act. This interim final rule would attempt to compensate for this imprecision and enable States to enroll those QIs whom they would have been able to enroll had the data been more precise.

II. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS'' at the beginning of your comments.]

This interim final rule amends 42 CFR 433.10(c) to specify the formula and the data to be used to determine States' allotments and to revise, under certain circumstances, individual State allotments for a Federal fiscal year for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under section 1902(a)(10)(E)(iv) of the Act.

The FY 2005 allotments were derived by applying U.S. Census Bureau data to the formula set forth in section 1933(c)(2)of the Act. However, the statute requires that the allocation of the fiscal year allotment be based upon a ratio of the amount of ''total number of individuals described in section 1902(a)(10)(E)(iv) in the State'' to the sum of these amounts for all States. Because this formula requires an estimate of an unknown number, that is, the number of individuals who could be QIs (rather than the number of individuals who were QIs in a previous period), our use of the Census Bureau data in the formula was a rough proxy to attain the statutory number. Actual expenditure data recently received, however, reveal that the Census Bureau data yielded an inappropriate distribution of the total appropriated fund as evidenced by the fact that several States have projected significant shortfalls in their allotments, while many other States project a significant surplus by the end of the fiscal year 2005. Census Bureau data may not have been accurate for the purpose of projecting States' needs because the data could not take into consideration all variables that contribute to QI eligibility and enrollment, such as resource levels and the application process itself. While section 1933 of the Act requires the Secretary to estimate the allocation of the allotments among the States, it does not preclude a subsequent readjustment of that allocation, when it becomes clear that the data used for that estimate did not effectuate the statutory objective.

This interim final rule permits, in this specific circumstance, a redistribution of surplus funds, as it has been demonstrated that the projections and estimates resulted in an inequitable initial allocation, such that some States were granted an allocation in excess of their total projected need, while the allocation granted to other States proved insufficient to meet their projected QI expenditures.

In this interim final rule, we are codifying the methodology we have been using to approximate the statutory formula for determining State allotments. However, since certain States project a deficit in their allotment before the end of fiscal year 2005, this rule permits fiscal year 2005 funds to be reallocated from the surplus States to the need States. The regulation specifies the methodology for computing the annual allotments, and for reallocating funds in this circumstance. The formula used to reallocate funds is intended to minimize impact on surplus States, to equitably distribute the total needed amount among those surplus States, and to meet the immediate needs for those States projecting deficits. Since the authorization for the QI benefit expires at the end of calendar year 2005 and currently no funds have been appropriated for the QI benefit beyond September 30, 2005, this regulation will sunset at the end of calendar year 2005. Should the Congress authorize an extension of the QI benefit and appropriate additional funds for allocation among the States, we will

amend the sunset date in this regulation to take into account any extension.

The resulting allotments are shown by State in the table below. In this table each column contains data defined as follows:

Chart—Revised FY 2005 Qualified Individuals Allotments

Column A—State. Column A shows the name of each State. Columns B through D shows the calculation of the prior FY 2005 QI Allotments.

Column B—Number of Individuals. Column B contains the estimated number of eligibles for each State, in thousands, as obtained from the Census Bureau.

Column C—State Share of Column B. Column C provides the percentage of total eligibles for each State, determined as the number of individuals for the State in Column B divided by the Total Number of Individuals for all States in Column B.

Column D—Prior FY 2005 QI Allotments. Column D contains each State's prior FY 2005 QI allotments, calculated as the State's percentage of total eligibles in Column C multiplied by the total amount available for FY 2005 for all States ($400,000,000).

Columns E through J shows the determination of the States' revised FY 2005 QI allotments.

Column E—FY 2005 Estimated QI Expenditures. Column E contains the States' most recent estimates of their total QI expenditures for FY 2005.

Column F—Need (Difference). Column F contains the additional amount of QI allotment needed for those States whose estimated expenditures in Column E exceed their original FY 2005 QI allotment in Column D; for such States Column E shows the difference of Column E minus Column D. For other States, Column F shows ''NA''.

Column G—Reduction Pool for Non-Need States. Column G contains the amount of the pool of surplus FY 2005 QI allotments for those States that project they will not need all of their FY 2005 QI allotment. For States whose estimates of QI expenditures for FY 2005 in Column E are equal to or less than their original FY 2005 QI allotment in Column D (referred to as non-need States), Column G shows the difference of Column D minus Column E.

Column H—Percent of Total Non-Need States. Column H shows the percentage of the total excess FY 2005 allotments for each Non-Need State, determined as the amount for each Non-Need State in Column G divided by the sum of the amounts for all states in Column G.

Column I—Reduction for Non-Need States. Column I shows the amount of reduction to Non-Need States' prior FY 2005 QI allotments in Column D in order provide for the total need shown in Column F (due to rounding adjustments, this total need is $8,914,634). The amount in Column I is determined as the percentage in Column H for Non-Need States multiplied by the total in Column F.

Column J—Revised FY 2005 QI Allotments. Column J contains the revised FY 2005 QI allotments for each State. For States that needed additional amounts based on their estimates, Column J is equal to the amount in Column D plus the additional need in Column F. For Non-Need States, Column J is equal to the amount in Column D minus the amount in Column I.

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REVISED FY 2005 QUALIFIED INDIVIDUALS ALLOTMENTS

STATE	Calculation of Prior FY 2005 QI Allotments			FY 2005 Estimated QI Expenditures /1	Need (Difference) If E>D, E-D	Reduction Pool for Non-Need States D - E	Percent of Total Non-Need States G/(Total of G)	Reduction for Non-Need States /2 $8,914,634	REVISED FY 2005 QI Allotments /3
	Number of Individuals /4	State Share of Col B	PRIOR FY 2005 QI Allotments						
A	B	C	D	E	F	G	H	I	J
Alabama	32.3	2.1%	$8,541,000	$12,332,218	$3,791,218	Need	Need	Need	$12,332,218
Alaska	0.7	0.0%	$176,000	$175,000	NA	$1,000	0.0006%	$53	$175,947
Arizona	30.0	2.0%	$7,924,000	$8,747,816	$823,816	Need	Need	Need	$8,747,816
Arkansas	17.3	1.1%	$4,578,000	$3,272,530	NA	$1,305,470	0.7735%	$68,955	$4,509,045
California	132.7	8.8%	$35,043,000	$7,442,925	NA	$27,600,075	16.3532%	$1,457,829	$33,585,171
Colorado	13.0	0.9%	$3,434,000	$1,665,000	NA	$1,769,000	1.0481%	$93,438	$3,340,562
Connecticut	14.3	0.9%	$3,786,000	$6,128,654	$2,342,654	Need	Need	Need	$6,128,654
Delaware	4.3	0.3%	$1,145,000	$261,000	NA	$884,000	0.5238%	$46,693	$1,098,307
District of Columbia	2.7	0.2%	$704,000	$450,000	NA	$254,000	0.1505%	$13,416	$690,584
Florida	111.7	7.4%	$29,496,000	$20,634,438	NA	$8,861,562	5.2505%	$468,065	$29,027,935
Georgia	42.7	2.8%	$11,270,000	$11,270,000	NA	$0	0.0000%	$0	$11,270,000
Hawaii	3.7	0.2%	$969,000	$274,715	NA	$694,285	0.4114%	$36,672	$932,328
Idaho	4.7	0.3%	$1,233,000	$800,000	NA	$433,000	0.2566%	$22,871	$1,210,129
Illinois	55.0	3.6%	$14,528,000	$10,787,000	NA	$3,741,000	2.2166%	$197,599	$14,330,401
Indiana	49.0	3.2%	$12,943,000	$3,756,400	NA	$9,186,600	5.4431%	$485,234	$12,457,766
Iowa	21.3	1.4%	$5,635,000	$1,583,403	NA	$4,051,597	2.4006%	$214,004	$5,420,996
Kansas	16.0	1.1%	$4,226,000	$977,952	NA	$3,248,048	1.9245%	$171,561	$4,054,439
Kentucky	29.7	2.0%	$7,836,000	$3,729,908	NA	$4,106,092	2.4329%	$216,883	$7,619,117
Louisiana	26.7	1.8%	$7,044,000	$8,323,946	$1,279,946	Need	Need	Need	$8,323,946
Maine	13.7	0.9%	$3,610,000	$2,362,000	NA	$1,248,000	0.7394%	$65,919	$3,544,081
Maryland	21.7	1.4%	$5,723,000	$2,003,300	NA	$3,719,700	2.2039%	$196,474	$5,526,526
Massachusetts	40.7	2.7%	$10,742,000	$2,951,377	NA	$7,790,623	4.6160%	$411,499	$10,330,501
Michigan	50.7	3.3%	$13,383,000	$6,500,000	NA	$6,883,000	4.0782%	$363,558	$13,019,442
Minnesota	25.0	1.7%	$6,604,000	$2,200,000	NA	$4,404,000	2.6094%	$232,618	$6,371,382
Mississippi	13.0	0.9%	$3,434,000	$4,000,000	$566,000	Need	Need	Need	$4,000,000
Missouri	27.3	1.8%	$7,220,000	$1,602,131	NA	$5,617,869	3.3286%	$296,734	$6,923,266
Montana	6.3	0.4%	$1,673,000	$450,000	NA	$1,223,000	0.7246%	$64,599	$1,608,401
Nebraska	9.3	0.6%	$2,465,000	$2,465,000	NA	$0	0.0000%	$0	$2,465,000
Nevada	6.7	0.4%	$1,761,000	$1,100,000	NA	$661,000	0.3916%	$34,914	$1,726,086
New Hampshire	6.7	0.4%	$1,761,000	$100,000	NA	$1,661,000	0.9842%	$87,734	$1,673,266
New Jersey	43.3	2.9%	$11,446,000	$7,723,271	NA	$3,722,729	2.2057%	$196,634	$11,249,366
New Mexico	11.3	0.7%	$2,994,000	$1,328,078	NA	$1,665,922	0.9871%	$87,994	$2,906,006
New York	86.7	5.7%	$22,892,000	$21,056,300	NA	$1,835,700	1.0877%	$96,961	$22,795,039
North Carolina	61.7	4.1%	$16,289,000	$10,289,000	NA	$6,000,000	3.5550%	$316,918	$15,972,082
North Dakota	4.0	0.3%	$1,057,000	$340,000	NA	$717,000	0.4248%	$37,872	$1,019,128
Ohio	73.0	4.8%	$19,282,000	$11,031,806	NA	$8,250,194	4.8883%	$435,773	$18,846,227
Oklahoma	24.7	1.6%	$6,516,000	$3,976,182	NA	$2,539,818	1.5049%	$134,153	$6,381,847
Oregon	16.3	1.1%	$4,314,000	$4,424,000	$110,000	Need	Need	Need	$4,424,000
Pennsylvania	72.7	4.8%	$19,194,000	$12,592,215	NA	$6,601,785	3.9116%	$348,705	$18,845,295
Rhode Island	8.0	0.5%	$2,113,000	$973,193	NA	$1,139,807	0.6753%	$60,204	$2,052,796
South Carolina	30.7	2.0%	$8,100,000	$3,641,000	NA	$4,459,000	2.6420%	$235,523	$7,864,477
South Dakota	6.7	0.4%	$1,761,000	$550,160	NA	$1,210,840	0.7174%	$63,956	$1,697,044
Tennessee	39.3	2.6%	$10,390,000	$5,630,400	NA	$4,759,600	2.8201%	$251,401	$10,138,599
Texas	99.0	6.5%	$26,150,000	$15,823,646	NA	$10,326,354	6.1184%	$545,435	$25,604,565
Utah	5.3	0.4%	$1,409,000	$542,160	NA	$866,840	0.5136%	$45,786	$1,363,214
Vermont	5.0	0.3%	$1,321,000	$75,000	NA	$1,246,000	0.7383%	$65,813	$1,255,187
Virginia	37.7	2.5%	$9,949,000	$3,400,000	NA	$6,549,000	3.8803%	$345,916	$9,603,084
Washington	20.0	1.3%	$5,283,000	$5,283,000	NA	$0	0.0000%	$0	$5,283,000
West Virginia	17.7	1.2%	$4,667,000	$1,971,813	NA	$2,695,187	1.5969%	$142,359	$4,524,641
Wisconsin	20.3	1.3%	$5,371,000	$810,000	NA	$4,561,000	2.7024%	$240,911	$5,130,089
Wyoming	2.3	0.2%	$616,000	$332,000	NA	$284,000	0.1683%	$15,001	$600,999
Total	1514.3	100.0%	$400,000,000	$240,139,937	$8,913,634	$168,774,697	100.0000%	$8,914,634	$400,000,000

Footnotes:

/1 FY 2005 Estimates from July 2005 CMS Survey of States

/2 Total reduction adjusted due to rounding in Column D

/3 For Need States revised QI allotment is equal to original allotment in Column D increased by amount in Column F
For Non-Need States revised QI allotment is equal to original allotment in Column D reduced by amount in Column I

/4 Three-year average (2001-2003) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of FPL.

Note: Totals may not add due to rounding.

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III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Waiver of Notice With Comment and 30-Day Delay in Effective Date

[If you choose to comment on issues in this section, please include the caption ''WAIVER OF ADVANCE PUBLIC COMMENT'' at the beginning of your comments.]

We ordinarily publish an advance notice in the **Federal Register** for substantive rules to provide a period for public comment. However, we may waive that procedure if we find good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date.

We are publishing this rule as an interim final rule because of the need to notify individual States of the limitations on Federal funds for their Medicaid expenditures for payment of Medicare Part B premiums for qualifying individuals. Some States have experienced deficits in their current allotments that have caused them to deny benefits to eligible applicants, while other States project a surplus in their allotments. This rule permits redistribution of funds and will allow all eligible applicants to receive QI benefits during this calendar year. Because access to Medicare Part B coverage for QIs, who without this coverage would have difficulty paying for needed health care, is critically important, we believe that it is in the public interest to waive the usual notice and comment procedure which we undertake before making a rule final.

Also, for the reasons discussed above, we find that good cause exists to dispense with the normal requirement that a regulation cannot become effective any earlier than 30 days after its publication. States which will have access to additional funds to enroll QIs need to know that these funds are available as soon as possible, so they can begin enrolling QIs. While we believe those States which will have diminished amounts available for this fiscal year will have sufficient funds for enrolling all potential QIs in their States, they also need to know as soon as possible that a certain amount of their unused allocation will no longer be available to them for this fiscal year.

We are publishing this interim final rule, with a 60-day period for public comment. However, if we decide that changes are necessary as a result of our consideration of timely comments, we will issue a final rule and respond to the comments in that rule.

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). 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 for 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.

This interim final rule with comment period codifies our procedures for implementing provisions of the Balanced Budget Act of 1997 to allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for low-income Medicare beneficiaries. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments. Because the data specified in the law were not initially available, we used comparable data from the U.S. Census Bureau on the number of possible qualifying individuals in the States. This rule also permits, in a specific circumstance, reallocation of funds to enable enrollment of all eligible individuals to the extent of the available funding.

We believe that the statutory provisions implemented in this interim final rule with comment period will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for qualifying individuals and, with the reallocation of the State allotments a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid. In no States will the changes in allotments result in fewer individuals receiving the QI benefit. The FY 2005 cost for this provision has been included in the FY 2006 President's Budget.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. The analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Core-Based Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this interim final rule with comment period will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this interim final rule with comment period was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

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

■ 2. Section 433.10 is amended by adding new paragraph (c)(5) to read as follows:

§ 433.10 Rates of FFP for program services.

* * * * *

(c) * * *

(5) (i) Under section 1933(d) of the Act, the Federal share of State expenditures for Medicare Part B premiums described in section 1905(p)(3)(A)(ii) of the Act on behalf of Qualifying Individuals described in section 1902(a)(10)(E)(iv) of the Act, is 100 percent, to the extent that the assistance does not exceed the State's allocation under paragraph (c)(5)(ii) of this section. To the extent that the assistance exceeds that allocation, the Federal share is 0 percent.

(ii) Under section 1933(c)(2) of the Act and subject to paragraph (c)(5)(iii) of this section, the allocation to each State is equal to the total allocation specified in section 1933(c)(1) of the Act multiplied by the Secretary's estimate of the ratio of the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act in the State to the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act for all eligible States. In estimating that ratio, the Secretary will use data from the U.S. Census Bureau.

(iii) If, based on projected expenditures for a fiscal year, the Secretary determines that the expenditures described in paragraph (c)(5)(i) of this section for one or more States are projected to exceed the allocation made to the State, the Secretary may adjust each State's fiscal year 2005 allocation, as follows:

(A) The Secretary will compare each State's new projected total expenditures for the expenses described in paragraph (c)(5)(i) of this section to the State's initial allocation, to determine the extent of each State's projected surplus or deficit.

(B) The surplus of each State with a projected surplus, as determined in accordance with paragraph (c)(5)(iii)(A) of this section will be added together to arrive at the Total Projected Surplus.

(C) The deficit of each State with a projected deficit, as determined in accordance with paragraph (c)(5)(iii)(A) of this section will be added together to arrive at the Total Projected Deficit.

(D) Each State with a projected deficit will receive an additional allocation equal to the amount of its projected deficit. The amount to be reallocated from each State with a projected surplus will be equal to $A \times B$, where A equals the Total Projected Deficit and B equals the amount of the State's projected surplus as a percentage of the Total Projected Surplus.

(iv) CMS will notify States of any changes in allotments resulting from any reallocations without opportunity for prior comment. CMS will follow applicable rulemaking procedures in publishing revisions to the allotments resulting from changes other those that specified above.

(v) The provisions of this paragraph (c)(5) will be in effect though the end of calendar year 2005.

Authority: Sections 1902(a)(10), 1933 of the Social Security Act (42 U.S.C. 1396a), and Pub. L. 105–33.

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

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 15, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–16973 Filed 8–23–05; 9:19 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D. 081705H]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Area and the Eastern U.S./Canada Haddock Special Access Program Pilot Program

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock Special Access Program (SAP) Pilot Program, to limited access Northeast (NE) multispecies days-at-sea (DAS) vessels for the remainder of the 2005 fishing year (i.e., through April 30, 2006), unless otherwise notified by the Administrator, Northeast Region, NMFS (Regional Administrator). This closure is based on a determination by the Regional Administrator that 90 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area has already been harvested during the 2005 fishing year. This action is being taken to prevent the 2005 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2005 fishing year in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr local time, August 26, 2005, through 2400 hr local time, April 30, 2006. One exception to this prohibition is discussed in the **SUPPLEMENTARY INFORMATION** section of this temporary rule.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Areas are found at 50 CFR 648.85. In addition,

regulations specifically governing vessel operations in the Eastern U.S./Canada Haddock SAP Pilot Program are specified at § 648.85(b)(8). These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP Pilot Program, under specific conditions. The final GB cod TAC allocation for the 2005 fishing year was specified at 260 mt (July 7, 2005; 70 FR 39190). Once 30 percent and/or 60 percent of the TAC allocations specified for the U.S./Canada Management Area are projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(D) authorize the Regional Administrator to modify or close access to the Eastern U.S./Canada Area by all limited access NE multispecies DAS vessels to prevent over-harvesting the TAC allocations for the U.S./Canada Management Area.

Based upon vessel monitoring system (VMS) daily catch reports, dealer reports, and other available information, the Regional Administrator has determined that, to date, 90 percent of the 2005 GB cod TAC of 260 mt has been harvested by NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area. Based on the small 2005 GB cod TAC and the very rapid rate at which the GB cod TAC has been harvested during the 2005 fishing year, it is likely that the 2005 GB cod TAC would be harvested before the end of the fishing year. Therefore, based on the available information described above, to ensure that the TAC for GB cod will not be exceeded, the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP Pilot Program, is closed to all limited access NE multispecies DAS vessels for the remainder of the 2005 fishing year, effective August 26, 2005 through April 30, 2006, pursuant to the regulations at § 648.85(a)(3)(iv)(D). This area may be reopened at a later date during the 2005 fishing year, in accordance with the regulations at § 648.85(a)(3)(iv)(D), should it be determined that there is additional GB cod TAC remaining and that it could be harvested without resulting in exceeding the GB cod TAC for the 2005 fishing year. However, vessels that have already declared their intent to fish in the Eastern U.S./Canada Area, including the Eastern U.S./Canada Haddock SAP Pilot Program (VMS Area Codes 2, 5, or 6) through VMS, departed on a trip, and crossed the demarcation line as of 0001 hours on August 26, 2005, are exempt from the closure initially in that they may finish their trip into the Eastern U.S./Canada Area.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the 30-day delayed effectiveness for this action, as notice and comment and delayed effectiveness would be impracticable and contrary to the public interest. Given the small GB cod TAC for the Eastern U.S./Canada Area during the 2005 fishing year and the very rapid rate at which the GB cod TAC was harvested to date, it would be impractical for NMFS to provide for prior notice and opportunity for public comment or a delayed effectiveness because this would likely prevent the agency from closing the Eastern U.S./Canada Area and the Eastern U.S./Canada Haddock SAP Pilot Program before the GB cod TAC is fully harvested. To allow vessels to continue to direct fishing effort on GB cod during the period necessary to publish and receive comments on a proposed rule, or to delay effectiveness, would result in the continued harvest of GB cod, potentially increasing the potential for the groundfish fishery to exceed the GB cod TAC for the Eastern U.S./Canada Area during the 2005 fishing year, thereby unnecessarily delaying rebuilding of this overfished stock. Exceeding the GB cod TAC during the 2005 fishing year would require any overages to be deducted from the 2006 GB cod TAC for the Eastern U.S./Canada Area. This would result in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Eastern U.S./Canada Area, reduced opportunities to fully harvest the GB cod, GB haddock, and GB yellowtail flounder TACs in the Eastern U.S./Canada Area, and a reduced chance of achieving optimum yield in the groundfish fishery. The rate of harvest of GB cod in the Eastern U.S./Canada Area is updated weekly on NMFS's Northeast Regional Office website at *http://www.nero.noaa.gov*. Accordingly, the public is able to obtain information that would provide at least some advanced notice of a potential closure of the Eastern U.S./Canada Area minimizing the need for a delayed effectiveness. Therefore, based on the above, it would be impracticable and contrary to the public interest to delay closure of this area through prior notice and public comment or a delay in the effectiveness of this action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17024 Filed 8–23–05; 2:16 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 165
Friday, August 26, 2005

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1924

RIN 0575–AC60

Surety Requirements

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service is amending its regulations to change the threshold for surety requirements guaranteeing payment and performance from a $100,000 contract amount to the maximum Rural Development Single Family Housing area lending limit. This limit will vary by locality. This will liberalize the requirement for surety and take into account the increased construction cost of single family homes in Rural Development's Single Family Housing Program. This will ease the burden on small contractors for whom obtaining surety is difficult and expensive, thereby reducing costs to our single family housing borrowers.

DATES: Written or e-mail comments must be received on or before October 25, 2005.

ADDRESSES: You may submit to this rule by any of the following methods:

- Agency Web Site: *http://rdinit.usda.gov/regs/.* Follow the instructions for submitting comments on the Web Site.
- E-Mail: *comments@one.usda.gov.* Include the RIN number (0575–AC60) in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- Hand Delivery/Courier: Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Michel Mitias, Technical Support Branch, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, STOP 0761, 1400 Independence Avenue SW., Washington, DC 20250–0761; Telephone: 202–720–9653; FAX: 202–690–4335; E-mail: *michel.mitias@usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

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).

Civil Justice Reform

In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

Regulatory Flexibility Act

The Administrator of the Rural Housing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis was not performed.

Paperwork Reduction Act

There are no new reporting and recordkeeping requirements associated with this rule.

Unfunded Mandates Reform Act

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

Environmental Impact Statement

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

Programs Affected

The programs affected are listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans, and Number 10.415, Rural Rental Housing Loans. Rural Rental Housing Loans will be affected for those construction contracts above the applicable Rural Development area loan limit.

Intergovernmental Review

RHS conducts intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' and in 7 CFR part 3015, subpart V. The Very Low to Moderate Income Housing Loans Program, Number 10.410, is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Rental Housing Loans Program, Number 10.415, conducts intergovernmental reviews on a case-by-case basis. An intergovernmental review for this revision is not required or applicable.

Background

RHS administers the Direct Single Family Housing Loan and Grant program pursuant to 7 CFR part 3550, designed to assist very low and low-income households to obtain modest, decent, safe, and sanitary housing for use as permanent residences in rural areas. Direct loans may be used to buy, build, or improve the applicant's permanent residence.

RHS regulations in 7 CFR part 1924, subpart A, contain requirements for construction which is funded with direct RHS loans, including direct single family housing loans. The regulation also applies to larger direct funded construction projects by other agencies in the Rural Development mission area. This regulation was originally promulgated on March 13, 1987 in 52 FR 41833. One of the requirements in this regulation is that for construction work performed by the contract method (where the borrower contracts with a builder for the construction), the builder must obtain a surety bond guaranteeing payment and performance in the amount of the contract when the contract exceeds $100,000. This amount has remained unchanged since 1987. In 1987, a single family house constructed and financed under the direct single family housing loan program would not exceed $100,000. Since 1987, construction costs for single family houses financed by RHS have dramatically increased so that now construction costs frequently exceed $100,000. The requirement that builders obtain surety bonds when the construction contract exceeds $100,000 has made it difficult for contractors to compete for direct single family housing projects financed by RHS. While the regulation contains internal exceptions for the $100,000 requirement, none of these exceptions satisfactorily resolves the cost burden for builders of direct single family housing.

The revision to 7 CFR 1924.6(a)(3)(i)(A) will facilitate the process of construction by raising the threshold when the contractor must acquire surety bonds. The purpose of this regulation is to revise the existing surety bond requirement for direct funded single family housing. The new threshold will be when the contract exceeds the applicable RHS area single family housing loan limit as established pursuant to 7 CFR 3550.63 and the limit for any particular area is available from any Rural Development office.

The provisions in 7 CFR 1924.6(a)(3)(i) that require payment and performance bonds when construction is under this threshold amount remain unchanged. RHS has determined that changing the threshold for payment and performance bonds provides for more flexibility, is locality based, borrowers are adequately protected, and housing costs are reduced.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

For the reasons set forth in the preamble, Chapter XVIII, Title 7, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

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

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.6 is amended by revising paragraph (a)(3)(i)(A) to read as follows:

§ 1924.6 Performing development work.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(A) The contract exceeds the applicable Rural Development Single Family Housing area loan limit as per 7 CFR 3550.63. (Loan limits are available at the local Rural Development field office.)

* * * * *

Dated: July 28, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–17026 Filed 8–25–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21998; Directorate Identifier 2005–CE–40–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all GROB–WERKE Model G120A airplanes. This proposed AD would require you to inspect for signs of any chafing damage to the attachment cables of the switch panels below the left-hand instrument panel, any damaged switch below the switch panels of the left-hand instrument panel, any damaged (that is, sharp) edge of the support tray for the attachment cables of the switch panels below the left-hand instrument panel; correct any damage found during the inspection; and apply a layer of anti-rub (protective padding) strips to the edge of the support tray. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to detect, correct, and prevent chafing of the cables against the rear lip of the tray that holds the switch panels. Chafing of the electrical cables could result in smoke or fire in the cockpit.

DATES: We must receive any comments on this proposed AD by September 26, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–21998; Directorate Identifier 2005–CE–40–AD.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket

number, ''FAA–2005–21998; Directorate Identifier 2005–CE–40–AD'' at the beginning of your 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 rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21998; Directorate Identifier 2005–CE–40–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports that GROB received a report of smoke in the cockpit on a Model G120A airplane. The emergency avionic switch on the switch panel below the left-hand instrument panel was identified as the source of the smoke.

Chafing of the cables against the rear lip of the tray that holds the switch panels caused damage of the cable insulation. This damage resulted in arcing and melting of insulation.

What is the potential impact if FAA took no action? Chafing of the electrical cables could result in smoke or fire in the cockpit.

Is there service information that applies to this subject? GROB has issued Service Bulletin No. MSB1121–065, dated July 1, 2005.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting attachment cable bundles of switches below the switch panels of the left-hand instrument panel for any signs of chafing damage;
—Replacing attachment cable bundles if any chafing damage is found;
—Inspecting for any damaged (that is, sharp) edge on the support tray for the attachment cables of switches below the switch panels of the left-hand instrument panel;
—Grinding off any sharp edge on the support tray and cleaning thoroughly;
—Replacing any damaged switch on switch panels of the left-hand instrument panel; and
—Applying a layer of anti-rub strips (protective padding) to the edges of the panels.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number D–2005–242, dated July 1, 2005, to ensure the continued airworthiness of these airplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These GROB Model G120A airplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other GROB Model G120A airplanes of the same type design that are registered in the United States, we are proposing AD action to detect, correct, and prevent chafing of the cables against the rear lip of the tray that holds the switch panels. Chafing of the electrical cables could result in smoke or fire in the cockpit.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 6 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection, replacement of any damaged cable bundle, damaged switch, or grinding off any sharp edge on the support tray, and installation of the protective padding:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 an hour = $65	$20	$85	$85 × 6 = $510

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Would this proposed AD impact various entities? 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.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this 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. 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 summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–21998; Directorate Identifier 2005–CE–40–AD'' in your request.

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 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 (AD):

GROB–WERKE: Docket No. FAA–2005–21998; Directorate Identifier 2005–CE–40–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by September 26, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to detect, correct, and prevent chafing of the cables against the rear lip of the tray that holds the switch panels. Chafing of the electrical cables could result in smoke or fire in the cockpit.

What Must I do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect for: (i) Any signs of chafing damage to the attachment cables of switches below the switch panels of the left-hand instrument panel;. (ii) Any damaged switch on switch panels of the left-hand instrument panel; and (iii) Any damaged (that is, sharp) edge of the support tray for the attachment cables of switches below the switch panels of the left-hand instrument panel.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow GROB Service Bulletin No. MSB1121–065 dated July 1, 2005.
(2) Correct any damage found as a result of the inspection required by paragraph (e)(1) of this AD. (i) If you find any signs of chafing damage to the attachment cables of switches below the switch panels of the left-hand instrument panel, replace the attachment cables; (ii) If you find any damaged switch below the switch panels of the left-hand instrument panel, replace the switch; and (iii) If you find any damaged (that is, sharp) edge on the support tray for the attachment cables of switches below the switch panels of the left-hand instrument panel, grind off any sharp edges and clean thoroughly.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow GROB Service Bulletin No. MSB1121–065 dated July 1, 2005.

Actions	Compliance	Procedures
(3) Apply anti-rub (padding) strips to the edge of the support tray for the attachment cables of switches below the switch panels of the left-hand instrument panel.	Before further flight after the inspection required by paragraph (e)(1) of this AD. This modification is required even if damage is not found during the inspections.	Follow GROB Service Bulletin No. MSB1121–065 dated July 1, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2005–242, effective date: July 1, 2005, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact GROB Luft- und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Federal Republic of Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–21998; Directorate Identifier 2005–CE–40–AD.

Issued in Kansas City, Missouri, on August 19, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16986 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 & 135

[Docket No. FAA–2001–9483]

RIN 2120–AG43

Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking, withdrawal.

SUMMARY: The FAA is withdrawing a previously published Advance Notice of Proposed Rulemaking that sought public comment on issues about the use of child restraint systems (CRSs) in aircraft. Specifically, we sought crash performance and ease-of-use information about existing and new automotive CRSs, when used in aircraft. We also sought information about the development of any new or improved CRSs designed exclusively for aircraft use. We are withdrawing the document to pursue other options that will mitigate the risk of child injuries and fatalities in aircraft.

FOR FURTHER INFORMATION CONTACT: Nancy Lauck Claussen, Federal Aviation Administration, Flight Standards Service, Certificate Management Office, 2800 N. 44 Street, Suite 450, Phoenix, AZ 85008, telephone (602) 379–4350, e-mail *nancy.l.claussen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1997, the White House Commission on Aviation Safety and Security (the Commission) issued a final report that included a recommendation on CRS use during flight. The following is an excerpt from the final report:

''The FAA should revise its regulations to require that all occupants be restrained during takeoff, landing, and turbulent conditions, and that all infants and small children below the weight of 40 pounds and under the height of 40 inches be restrained in an appropriate child restraint system, such as child safety seats, appropriate to their height and weight.''

On February 18, 1998, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) to respond to the Commission's recommendation (63 FR 8324). The FAA sought public comment on issues about the use of CRSs in aircraft during all phases of flight. The ANPRM did not propose specific regulatory changes. Rather, it asked for comments, data, and analysis to help the FAA decide the best regulatory approach to ensure the safety of children who are passengers in aircraft.

The FAA has determined it is not appropriate to mandate the use of CRSs in aircraft now. We remain concerned that if we require children under 2 years old to be in an approved restraint system (which requires a passenger seat), affected operators might find it necessary to charge a fare for transporting these children. (Currently most, if not all, operators do not charge a fare for children under 2 years old who are held in an adult's lap.) In turn, for economic reasons some adults might decide to drive in automobiles to their destinations rather than fly. The FAA is concerned because automobile injury and fatality rates are higher than aircraft injury and fatality rates. As a result, there would be a net increase in transportation injuries and fatalities as families opt, for economic reasons, to drive rather than fly to their destinations.

1995 Report to Congress

In 1994 Congress required the Secretary of Transportation, by Section 522 of Public Law 103–305, to study the impact of mandating the use of CRSs for children under 2 years old on scheduled air carriers. The Secretary submitted a report of this study to Congress in 1995. The report estimated that, if a child restraint rule were imposed, approximately five infant lives would be saved aboard aircraft, and two major injuries and four minor injuries would be avoided over a 10-year period. The report also cautioned that this improvement would be offset by additional highway fatalities for airline passengers who chose to drive rather than purchase a seat for infants. Even if infant fares were only 25 percent of full fare, the report estimated that there would be diversion to cars and thus a net increase in fatalities over a 10-year period.

Industry Action

In July 1997, the air carrier industry took a positive step toward increasing infant air travel safety. At that time most major U.S. airlines introduced a general policy providing a 50 percent fare discount for domestic travel for at least one infant under 2 years old occupying a seat. Many commenters to the ANPRM noted that they have taken advantage of these infant fares.

1999 DOT Study

The concern expressed in the Report to Congress was that mandating CRSs (which require a passenger seat) could increase airline travel costs to families with infants enough to cause a significant number to travel by automobile instead of by air. This, in turn, would expose the entire family to the higher risks of automobile travel and associated highway fatalities and injuries.

The general economic principles contained in the FAA's 1995 Report to Congress are commonly accepted as valid. However, numerous critics have challenged the probable fare levels the airline industry would charge and the degree of diversion from air travel used in the report.

In May 1999, DOT completed an analysis supplementing the 1995 FAA study. This follow-on effort changed two key assumptions of FAA's report to Congress. The 1995 report assumed that passengers diverted to automobiles would continue to travel the same distance as the trip they would have taken by air. The DOT analysis took the position that a more realistic evaluation would be that distant trips would be cancelled or shorter trips would be substituted. The FAA study also analyzed the effect of any fare charged only on the average size family. The DOT study assumed that any fare charged would have a disproportionate impact on small family units and consequently those diverted to auto travel are likely to be smaller parties. For both of these reasons, the DOT analysis suggested that the exposure of diverted air passengers to highway risks would be less than that estimated in the FAA analysis. However, the DOT analysis still estimated a net increase in deaths and injuries if highway risks were considered.

Archives of Pediatrics & Adolescent Medicine Study

In a study published in the Archives of Pediatrics & Adolescent Medicine (October 2003), researchers reviewed existing data from numerous sources, including data that the FAA presented in its Report to Congress on Child Restraint Systems in 1995, regarding the effects of requiring CRS for infants and small children on commercial aircraft. The researchers reached two conclusions from this study: (1) Unless there was little or no diversion from airplanes to cars, there would be a net increase of deaths for children under 2. (2) Even with no diversion, the cost of the proposed policy per death prevented is too high and would not be an appropriate use of resources. If the additional cost per round trip were $200 per child under age 2, the cost per death prevented, ignoring car crash deaths, would be about $1.3 billion.

Discussion of Comments

The FAA received approximately 150 comments in response to its ANPRM on CRSs. The overwhelming majority of the commenters supported mandatory use of CRSs. Many of the comments were from private citizens who did not respond to the technical questions asked. The FAA specifically requested data and comments on the current practice of allowing an adult to hold a child under 2 years of age on his or her lap. ATA noted that data on the number of lap-held children are not systematically tracked by airlines but cited a 1993 Gallup organization survey conducted for them that shows 3.8 million trips were taken by children less than 2 years old. KLM offered brief comments about the levels of child travel throughout the year. Commenters did not submit data or analysis to convince the FAA that mandating the use of CRSs in aircraft would not have the unintended consequence of causing a net increase in transportation injuries and fatalities. The comments are available for viewing in the rulemaking docket set up for this project (docket no. FAA–2001–9483). To view the docket, go to *http://dms.dot.gov* and put in the docket number.

Continuing Efforts To Avoid Child Injury

Better CRSs

Concurrently with this withdrawal document, the FAA is amending its regulations to allow FAA-approved CRSs to be used in aircraft. Current FAA regulations allow the use of CRSs that are designed for the automobile environment. CRSs designed specifically for the aircraft environment cannot be used unless a specific exemption is issued to authorize such use. We are removing the need for air carriers to petition for an exemption to use CRSs that are approved by the FAA through a Type Certificate, Supplemental Type Certificate, or Technical Standard Order.

The FAA is aware of at least one innovative CRS that is expected to work well in the aircraft environment. This CRS, made by AMSAFE, improves lap belt performance for children between 22 and 44 pounds who would otherwise be restrained only with the lap belt. The FAA's Los Angeles Aircraft Certification Office worked with AMSAFE to issue STC No. ST01781LA on April 15, 2005, for a simple supplemental adjustable restraint. The restraint uses an additional belt/shoulder harness that goes around the seat back and attaches to the passenger lap belt, providing improved upper torso restraint. The device can be easily stowed and installed.

Education About Turbulence

As part of an initiative to prevent injuries caused by turbulence, the FAA is coordinating the dissemination of public information (to passengers and air carriers) that includes effective practices regarding the use of CRSs in turbulence. The FAA is planning on providing website information, creating a ''turbulence library of electronic resources'', and publishing an Advisory Circular.

Also, the FAA has launched a new phase of an existing nationwide public education campaign to raise public awareness about the importance of using CRSs and seat belts. The campaign emphasizes that: Proper use of CRSs and seat belts may prevent injuries, especially in the event of unexpected turbulence; the FAA strongly recommends that parents use an approved CRS based on the child's weight; and the FAA strongly advises all passengers to be properly restrained at all times.

As part of the education campaign, the FAA developed a new FAA website dedicated to informing passengers about seat belt use and child safety (*http://www.faa.gov/passengers/fly_children/crs/*). The Web site incorporates a series of print and radio Public Service Announcements (PSA), a video PSA, tips on child safety, and a brochure targeted to parents of young children. Several of these materials exist in both English and Spanish.

In addition, we are working together with interested organizations, including airline industry representatives, injury prevention groups and corporate entities. The focus of these partnerships is to establish web links between the FAA and partners to ensure they have the latest information on safety developments and to distribute copies of the new brochure.

Petitions for Rulemaking

The FAA has received several petitions for rulemaking regarding the use of CRSs in aircraft. Because of the timing of the petitions and the issues raised, the FAA had not formally closed the petitions. The petitions were from the Aviation Consumer Action Project (Docket No. 23833), Los Angeles Area Child Passenger Safety Association (Docket No. 25984), Stuart R. Miller

(Docket No. 25985), and Air Transport Association of America (Docket No. 26276). The FAA considers that this withdrawal document, along with earlier rulemakings on the subject of child restraints, responds to the petitions for rulemaking and we now consider the petitions closed.

Conclusion

The FAA withdraws the Advance Notice of Proposed Rulemaking published at 63 FR 43228 on August 12, 1998, to pursue other options that will mitigate the risk of child injuries and fatalities in aircraft. Withdrawal of the Advance Notice of Proposed Rulemaking does not preclude the FAA from issuing another notice on the subject matter in the future or commit the agency to any future course of action. Although we are not continuing rulemaking now, we strongly recommend that all children who fly, regardless of their age, use the appropriate restraint based on their size and weight.

Issued in Washington, DC, on August 18, 2005.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 05–16783 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–104143–05]

RIN 1545–BE32

Application of the Federal Insurance Contributions Act to Payments Made for Certain Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to regulations relating to payments made for service not in the course of the employer's trade or business, for domestic service in a private home of the employer, for agricultural labor, and for service performed as a home worker within the meaning of section 3121(d)(3)(C) of the Internal Revenue Code (Code). These proposed amendments would provide guidance concerning the application of the Federal Insurance Contributions Act (FICA) to these payments. These proposed amendments would affect employers that make these payments and employees that receive these payments. These proposed amendments would provide guidance to assist these taxpayers in complying with the law.

DATES: Written or electronic comments and requests for a public hearing must be received by November 25, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104143–05), room 5203, Internal Revenue Service, POB 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–104143–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–104143–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, please contact Paul Carlino of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–0047; concerning submissions of comments or to request a public hearing, please contact LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Employment Tax Regulations (26 CFR part 31) under sections 3102, 3121(a), 3121(a)(7), 3121(a)(8), 3121(a)(10), and 3121(i) of the Code. The Federal Insurance Contributions Act (FICA) generally imposes tax on each employer and employee. Under section 3111, FICA tax is imposed on the employer in an amount equal to a percentage of the wages paid by that employer. Under section 3101, FICA tax is also imposed on the employee in an amount equal to a percentage of the wages received by the employee with respect to employment. Section 3102 requires the employer to collect the tax imposed under section 3101 by deducting and withholding the amount of the tax from the wages as and when paid. Section 3121(a) defines wages for FICA tax purposes as all remuneration for employment unless otherwise excepted. Sections 3121(a)(7) (relating to domestic service in a private home of the employer and to service not in the course of the employer's trade or business), 3121(a)(8) (relating to agricultural labor) and 3121(a)(10) (relating to service performed as a home worker within the meaning of section 3121(d)(3)(C)) provide exceptions to the definition of wages for FICA tax purposes. Section 3121(i)(1) provides that in the case of domestic service described in section 3121(a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount, to the extent prescribed by regulations, may be computed to the nearest dollar.

Section 3102(a) provides that an employer may deduct an amount equivalent to the FICA tax imposed by section 3101 from any payment of cash remuneration to which sections 3121(a)(7)(B), 3121(a)(7)(C), 3121(a)(8)(B) and 3121(a)(10) apply, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than the dollar threshold amount used to determine whether the remuneration is wages for FICA tax purposes. An employer that chooses to withhold FICA taxes imposed by section 3101 prior to reaching the dollar threshold amount used to determine whether the remuneration is wages for FICA tax purposes must repay the employee the withheld amount if the dollar threshold is not met in the calendar year. If the withheld amount has been deposited, the employer must repay or reimburse the employee the withheld amount in accordance with the rules under § 31.6413(a)–1 of the regulations.

Changes to sections 3102(a) and 3121(a)(7)(B) were made by section 2(a)(1) of the Social Security Domestic Employment Reform Act of 1994, (SSDERA), Public Law 103–387 (108 Stat. 4071). The SSDERA also added section 3121(x). Changes to section 3102(a) were made by section 424(b) of the Social Security Protection Act of 2004 (SSPA), Public Law 108–203 (118 Stat. 493, 536). Changes to section 3121(a)(8)(B) were made by section 8017(b) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act), Public Law 100–647 (102 Stat. 3342, 3793) and section 9002(b) of the Omnibus Budget Reconciliation Act of 1987 (the 1987 Act), Public Law 100–203 (101 Stat. 1330, 1330–287). Changes to sections 3102(a), 3121(a)(7)(C) and 3121(a)(10) were made by sections 355(a) and 356(a) of the Social Security Amendments of 1977 (the 1977 Act), Public Law 95–216 (91 Stat. 1509, 1555). These statutory changes are not reflected in the existing regulations of §§ 31.3102–1, 31.3121(a)–2, 31.3121(a)(7)–1, 31.3121(a)(8)–1, 31.3121(a)(10)–1, and 31.3121(i)–1. These proposed regulations would amend these existing regulations to reflect the statutory changes.

Domestic Service in a Private Home of the Employer

Section 3121(a)(7)(B) provides an exclusion from wages for FICA tax purposes of certain cash remuneration paid by an employer to an employee for domestic service in a private home of the employer. The SSDERA amended the dollar threshold amount and time period used to determine the exclusion under section 3121(a)(7)(B). The SSDERA also added section 3121(x).

Prior to SSDERA, section 3121(a)(7)(B) provided that cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer was excluded from wages for FICA tax purposes if the cash remuneration paid in such quarter by the employer to the employee for such service was less than $50. The SSDERA amended section 3121(a)(7)(B) to provide that cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer is excluded from wages for FICA tax purposes if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x)) for such year. SSDERA is effective for cash remuneration paid after December 31, 1993.

The applicable dollar threshold (as defined in section 3121(x)) is $1,000 for calendar year 1995. The applicable dollar threshold is adjusted annually under the formula described in section 215(a)(1)(B)(ii) of the Social Security Act, Public Law 74–271 (49 Stat. 620). Under section 3121(x), if any amount as adjusted under section 215(a)(1)(B)(ii) is not a multiple of $100, such amount is rounded to the next lowest multiple of $100. For calendar year 2005, the applicable dollar threshold is $1,400.

Section 3121(i)(1) provides that in the case of domestic service described in section 3121(a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount, to the extent prescribed by regulations, may be computed to the nearest dollar. The amendment to section 3121(a)(7)(B) made by the SSDERA requires changes to the regulations under § 31.3121(i)–1.

Agricultural Labor

Section 3121(a)(8)(B) provides an exclusion from wages for FICA tax purposes of certain cash remuneration paid by an employer in any calendar year to an employee for agricultural labor. The 1987 Act and 1988 Act amended section 3121(a)(8)(B) to change the test for determining whether cash remuneration paid by an employer to an employee for such service is wages for FICA tax purposes.

Prior to the 1987 Act, section 3121(a)(8)(B) provided that cash remuneration paid by an employer in any calendar year to an employee for agricultural labor was excluded from wages for FICA tax purposes unless the cash remuneration was $150 or more, or the employee performed agricultural labor for the employer on 20 or more days during such year for cash remuneration computed on a time basis. The 1987 Act amended section 3121(a)(8)(B) to provide that cash remuneration paid by an employer in any calendar year to an employee for agricultural labor is excluded from wages for FICA tax purposes unless the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or the employer's expenditures for agricultural labor in such year equals or exceeds $2,500.

The 1988 Act added language to 3121(a)(8)(B) to provide that the test of whether the employer's expenditures for agricultural labor in any calendar year equal or exceed $2,500 has no effect in determining whether remuneration paid to an employee in such year constitutes wages under this section if such employee (1) is employed in agriculture as a hand-harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (2) commutes daily from his permanent residence to the farm on which he is employed, and (3) has been employed in agriculture less than 13 weeks during the preceding calendar year. Nonetheless, amounts paid to these seasonal workers count towards the $2,500 test when applying section 3121(a)(8)(B) to other agricultural workers. The 1987 and 1988 Acts are effective for cash remuneration paid after December 31, 1987.

Home Workers

Section 3121(a)(10) provides an exclusion from wages for FICA tax purposes of certain cash remuneration paid by an employer to an employee for service described in section 3121(d)(3)(C) (relating to home workers). The 1977 Act amended the dollar threshold amount and time period used to determine the exclusion under section 3121(a)(10).

Prior to the 1977 Act, section 3121(a)(10) provided that cash remuneration paid by an employer in any calendar quarter to an employee for service described in 3121(d)(3)(C) (relating to home workers) was excluded from wages for FICA tax purposes if the cash remuneration paid in such quarter by the employer to the employee for such service was less than $50. The 1977 Act amended section 3121(a)(10) to provide that remuneration paid by an employer in any calendar year to an employee for service described in section 3121(d)(3)(C) (relating to home workers) is excluded from wages for FICA tax purposes if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. The 1977 Act is effective for cash remuneration paid after December 31, 1977.

Service Not in the Course of the Employer's Trade or Business

Section 3121(a)(7)(C) provides an exclusion from wages for FICA tax purposes of certain cash remuneration paid by an employer to an employee for service not in the course of the employer's trade or business. The 1977 Act amended the dollar threshold amount and time period used to determine the exclusion under section 3121(a)(7)(C).

Prior to the 1977 Act, section 3121(a)(7)(C) provided that cash remuneration paid by an employer in any calendar quarter to an employee for service not in the course of the employer's trade or business was excluded from wages for FICA tax purposes if the cash remuneration paid in such quarter by the employer to the employee for such service was less than $50. The 1977 Act amended section 3121(a)(7)(C) to provide that cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business is excluded from wages for FICA tax purposes if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. The 1977 Act is effective for cash remuneration paid after December 31, 1977.

Explanation of Provisions

These proposed regulations would amend the existing regulations to reflect current law.

The proposed regulations relating to domestic service in a private home of the employer would amend existing regulations §§ 31.3102–1, 31.3121(a)–2(c), and 31.3121(a)(7)–1 to reflect changes implemented by the SSDERA and to be applicable as of that date. For cash remuneration paid prior to January 1, 1994 (the effective date of the SSDERA), taxpayers should rely on the

regulations applicable at the time such cash remuneration was paid.

The proposed regulations relating to agricultural labor would amend existing regulations §§ 31.3102–1, 31.3121(a)–2(c) and 31.3121(a)(8)–1 to reflect changes implemented by the SSPA, the 1987 Act and the 1988 Act and to be applicable as of that date. For cash remuneration paid prior to January 1, 1988 (the effective date of the 1987 Act and the 1988 Act), taxpayers should rely on the regulations applicable at the time such cash remuneration was paid.

The proposed regulations relating to home workers and/or to service not in the course of the employer's trade or business would amend existing regulations §§ 31.3102–1, 31.3121(a)–2(c), 31.3121(a)(7)–1 and 31.3121(a)(10)–1 to reflect changes implemented by the 1977 Act and to be applicable as of that date. For cash remuneration paid prior to January 1, 1978 (the effective date of the 1977 Act), taxpayers should rely on the regulations applicable at the time such cash remuneration was paid.

The proposed regulations relating to computation to the nearest dollar of cash remuneration for domestic service would amend the existing regulations under § 31.3121(i)–1 to reflect changes implemented by the SSDERA and to be applicable as of that date. For cash remuneration paid prior to January 1, 1994 (the effective date of the SSDERA), taxpayers should rely on the regulations applicable at the time such cash remuneration was paid.

Proposed Effective Date

These proposed regulations would be applicable on the date of publication of the Treasury Decision adopting these regulations as final regulations in the **Federal Register**. The regulations relating to domestic service in a private home of the employer would apply to cash remuneration paid on or after January 1, 1994. The regulations relating to agricultural labor would apply to cash remuneration paid on or after January 1, 1988. The regulations relating to home workers and/or service not in the course of the employer's trade or business would apply to cash remuneration paid on or after January 1, 1978. The regulations relating to computation to the nearest dollar of cash remuneration for domestic service would apply to cash remuneration paid on or after January 1, 1994.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Paul J. Carlino and Michael A. Swim, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. Section 31.3102–1 is amended by:

1. Revising paragraph (b).
2. Redesignating paragraph (c) as paragraph (d).
3. Adding new paragraph (c).
4. Adding paragraph (e).

The additions and revision read as follows:

§ 31.3102–1 Collection of, and liability for, employee tax; in general.

* * * * *

(b) The employer is permitted, but not required, to deduct amounts equivalent to employee tax from payments to an employee of cash remuneration to which the sections referred to in this paragraph (b) are applicable prior to the time that the sum of such payments equals—

(1) $100 in the calendar year, for service not in the course of the employer's trade or business, to which § 31.3121(a)(7)–1 is applicable;

(2) The applicable dollar threshold (as defined in section 3121(x)) in the calendar year, for domestic service in a private home of the employer, to which § 31.3121(a)(7)–1 is applicable;

(3) $150 in the calendar year, for agricultural labor, to which § 31.3121(a)(8)–1(c)(1)(i) is applicable; or

(4) $100 in the calendar year, for service performed as a home worker, to which § 31.3121(a)(10)–1 is applicable.

(c) At such time as the sum of the cash payments in the calendar year for a type of service referred to in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section equals or exceeds the amount specified, the employer is required to collect from the employee any amount of employee tax not previously deducted. If an employer pays cash remuneration to an employee for two or more of the types of service referred to in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section, the provisions of paragraph (b) of this section and this paragraph (c) are to be applied separately to the amount of remuneration attributable to each type of service. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)–1.

* * * * *

(e)(1) The provisions of paragraphs (a) and (d) of this section apply to any payment made on or after January 1, 1955.

(2) The provisions of paragraphs (b) and (c) of this section that apply to any payment made for service not in the course of the employer's trade or business or for service performed as a home worker within the meaning of section 3121(d)(3)(C) apply to any such payment made on or after January 1,

1978. The provisions of paragraphs (b) and (c) of this section that apply to any payment made for domestic service in a private home of the employer apply to any such payment made on or after January 1, 1994. The provisions of paragraphs (b) and (c) of this section that apply to any payment made for agricultural labor apply to any such payment made on or after January 1, 1988. For rules applicable to any payment for these services made prior to the dates set forth in this paragraph (e)(2), see § 31.3102–1 in effect at such time (see 26 CFR part 31 revised as of April 1, 2005).

Par. 3. Section 31.3121(a)–2 is amended by:

1. Revising paragraph (c)(1).
2. Redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(3) and (c)(4), respectively.
3. Adding new paragraph (c)(2).
4. Revising newly designated paragraph (c)(3).
5. Adding paragraph (d).

The additions and revisions read as follows:

§ 31.3121(a)–2 Wages; when paid and received.

* * * * *

(c)(1) The first $100 of cash remuneration paid, either actually or constructively, by an employer in any calendar year to an employee for—

(i) Service not in the course of the employer's trade or business, to which § 31.3121(a)(7)–1 is applicable, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year is at least $100; or

(ii) Service performed as a home worker within the meaning of section 3121(d)(3)(C), to which § 31.3121(a)(10)–1 is applicable, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year is at least $100.

(2) Cash remuneration paid, either actually or constructively, by an employer in any calendar year to an employee for domestic service in a private home of the employer to which § 31.3121(a)(7)–1 is applicable, and before the sum of the payments of such cash remuneration equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year.

(3) Cash remuneration paid, either actually or constructively, by an employer in any calendar year to an employee for agricultural labor to which § 31.3121(a)(8)–1 is applicable, and before either of the events described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section has occurred, shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that—

(i) The sum of the payments of such remuneration is $150 or more; or

(ii) The employer's expenditures for agricultural labor in such calendar year equals or exceeds $2,500, except that this paragraph (c)(3)(ii) shall not apply in determining when such remuneration is deemed to be paid under this paragraph if such employee—

(A) Is employed as a hand-harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment;

(B) Commutes daily from his permanent residence to the farm on which he is so employed; and

(C) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

* * * * *

(d)(1) The provisions of paragraphs (a) and (b) of this section apply to any payment of wages made on or after January 1, 1955.

(2) The provisions of paragraph (c) of this section that apply to any payment of wages made for service not in the course of the employer's trade or business or for service performed as a home worker within the meaning of section 3121(d)(3)(C) apply to any such payment made on or after January 1, 1978. The provisions of paragraph (c) of this section that apply to any payment of wages made for domestic service in a private home of the employer apply to any such payment made on or after January 1, 1994. The provisions of paragraph (c) of this section that apply to any payment of wages made for agricultural labor apply to any such payment made on or after January 1, 1988. For rules applicable to any payment of wages for these services made prior to the dates set forth in this paragraph (d)(2), see § 31.3102–1 in effect at such time (see 26 CFR part 31 revised as of April 1, 2005).

Par. 4. Section 31.3121(a)(7)–1 is amended by:

1. Revising paragraphs (c)(1) and (c)(2).
2. Adding paragraphs (c)(3), (d) and (e).

The additions and revisions read as follows:

§ 31.3121(a)(7)–1 Payments for services not in the course of employer's trade or business or for domestic service.

* * * * *

(c) *Cash payments.* (1) The term *wages* does not include cash remuneration paid by an employer in any calendar year to an employee for—

(i) Domestic service in a private home of the employer, unless the cash remuneration paid in such year by the employer to the employee for such service equals or exceeds the applicable dollar threshold (as defined in section 3121(x)) for such year; or

(ii) Service not in the course of the employer's trade or business, unless the cash remuneration paid in such year by the employer to the employee for such service equals or exceeds $100.

(2) The tests relating to cash remuneration are based on the remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. The following example illustrates this provision:

Example. On March 31, 2004, employer X pays employee A cash remuneration of $100 for service not in the course of X's trade or business. Such remuneration constitutes wages subject to the taxes even though $10 thereof represents payment for such service performed by A for X in December 2003.

(3) In determining whether wages have been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration from an employer in a calendar year for both types of services the pertinent cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar year for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the pertinent cash-remuneration test is to be applied separately to the remuneration received from each employer.

(d) *Cross references.* (1) For provisions relating to deduction of employee tax or amounts equivalent to

the tax from cash payments for the services described in this section, see § 31.3102–1;

(2) For provisions relating to time of payment of wages for such services, see § 31.3121(a)–2;

(3) For provisions relating to computations to the nearest dollar of any payment of cash remuneration for domestic service in a private home of the employer, see § 31.3121(i)–1.

(e) *Effective dates.* (1) The provisions of this section apply to any cash payment for service not in the course of the employer's trade or business made on or after January 1, 1978 and for domestic service in a private home of the employer made on or after January 1, 1994.

(2) For rules applicable to any cash payment made prior to the dates set forth in paragraph (e)(1), see § 31.3121(a)(7)–1 in effect at such time (see 26 CFR part 31 revised as of April 1, 2005).

Par. 5. Section 31.3121(a)(8)–1 is amended by:

1. Revising paragraphs (c), (d), and (e).
2. Adding paragraph (h).

The addition and revisions read as follows:

§ 31.3121(a)(8)–1 Payments for agricultural labor.

* * * * *

(c) *Cash payments.* (1) The term *wages* does not include cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) The cash remuneration paid in such year by the employer to the employee for such labor is $150 or more; or

(ii) The employer's expenditures for agricultural labor in such year equal or exceed $2,500, except that this paragraph (c)(1)(ii) shall not apply in determining whether remuneration paid to an employee constitutes wages for agricultural labor if such employee—

(A) Is employed as a hand-harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment;

(B) Commutes daily from his permanent residence to the farm on which he is so employed; and

(C) Has been employed in agriculture less than 13 weeks during the preceding calendar year.

(2) The application of the provisions of paragraph (c)(1) of this section may be illustrated by the following example:

Example. Employer X pays A $140 in cash for agricultural labor in calendar year 2004. X makes no other payments to A during the year and makes no other payment for agricultural labor to any other employee. Employee A is not employed as a hand-harvest laborer. Neither the $150-cash-remuneration test nor the $2,500-employer's-expenditures-for-agricultural-labor test is met. Accordingly, the remuneration paid by X to A is not subject to the taxes. If in 2004 X had paid A $140 in cash for agricultural labor and had made expenditures of $2,360 or more to other employees for agricultural labor, the $140 paid by X to A would have been subject to tax because the $2,500-employer's-expenditures-for-agricultural-labor test would have been met. Or, if X had paid A $150 in cash in 2004 and made no other payments to any other employee for agricultural labor, the $150 paid by X to A would have been subject to tax because the $150-cash-remuneration test would have been met.

(d) *Application of cash-remuneration test.* (1) If an employee receives cash remuneration from an employer both for services which constitute agricultural labor and for services which do not constitute agricultural labor, only the amount of such remuneration which is attributable to agricultural labor shall be included in determining whether cash remuneration of $150 or more has been paid in the calendar year by the employer to the employee for agricultural labor. The following example illustrates this paragraph (d)(1):

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X's farm when additional help is required for the farm activities. In the calendar year 2004, X pays A $140 in cash for services performed in agricultural labor, and $4,000 for services performed in connection with the operation of the store. X has no additional expenditures for agricultural labor in 2004. Since the cash remuneration paid by X to A in the calendar year 2004 for agricultural labor is less than $150, the $150-cash-remuneration test is not met. The $140 paid by X to A in 2004 for agricultural labor does not constitute wages and is not subject to the taxes.

(2) The test relating to cash remuneration of $150 or more is based on the cash remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. It is immaterial if such cash remuneration is paid in a calendar year other than the year in which the agricultural labor is performed. The following example illustrates this paragraph (d)(2):

Example. Employer X pays cash remuneration of $150 in the calendar year 2004 to employee A for agricultural labor. Such remuneration constitutes wages even though $10 of such amount represents payment for agricultural labor performed by A for X in December 2003.

(3) In determining whether $150 or more has been paid to an employee for agricultural labor, only cash remuneration for such labor shall be taken into account. If an employee receives cash remuneration in any one calendar year from more than one employer for agricultural labor, the cash-remuneration test is to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such labor.

(e) *Application of employer's-expenditures-for-agricultural-labor test.* (1) If an employer has expenditures in a calendar year for agricultural labor and for non-agricultural labor, only the amount of such expenditures for agricultural labor shall be included in determining whether the employer's expenditures for agricultural labor in such year equal or exceed $2,500. The following example illustrates this paragraph (e)(1):

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X's farm when additional help is required for the farm activities. In calendar year 2004, X pays A $140 in cash for services performed in agricultural labor, and $4,000 for services performed in connection with the operation of the store. X has no additional expenditures for agricultural labor in 2004. Since X's expenditures for agricultural labor in 2004 are less than $2,500, the employer's-expenditures-for-agricultural-labor test is not met. The $140 paid by X to A in 2004 for agricultural labor does not constitute wages and is not subject to the taxes.

(2) The test relating to an employer's expenditures of $2,500 or more for agricultural labor is based on the expenditures paid by the employer in a calendar year rather than on the expenses incurred by the employer during a calendar year. It is immaterial if the expenditures are paid in a calendar year other than the year in which the agricultural labor is performed. The following example illustrates this paragraph (e)(2):

Example. Employer X employs A to construct fences on a farm owned by X. The work constitutes agricultural labor and is performed over the course of November and December 2003. A is not employed by X at any other time, however X does have other employees to whom X pays remuneration of $2,000 for agricultural labor in 2003. X pays A $140 in cash in November 2003 and $140 in cash in January 2004, in full payment for the work. The $140 payment to A made in November is not wages for calendar year 2003 because the $150-cash-remuneration test is not met and X's total expenditures for agricultural labor for such year are not equal to or in excess of $2,500. The $140 payment

to A made in January is not wages for 2004 because the $150 cash-remuneration test is not met. However, if X pays additional remuneration to employees for agricultural labor in 2004 that equals or exceeds $2,360, the employer's-expenditures-for-agricultural-labor test will be met and the $140 paid by X to A in 2004 will be considered wages. It is immaterial that the work was performed in 2003.

* * * * *

(h) *Effective dates.* The provisions of this section apply to any payment for agricultural labor made on or after January 1, 1988. For rules applicable to any payment for agricultural labor made prior to January 1, 1988, see § 31.3121(a)(8)–1 in effect at such time (see 26 CFR part 31 revised as of April 1, 2005).

Par. 6. Section 31.3121(a)(10)–1 is revised to read as follows:

§ 31.3121(a)(10)–1 Payments to certain home workers.

(a) The term *wages* does not include remuneration paid by an employer in any calendar year to an employee for service performed as a home worker who is an employee by reason of the provisions of section 3121(d)(3)(C) (see § 31.3121(d)–1(d)), unless the cash remuneration paid in such calendar year by the employer to the employee for such services is $100 or more. The test relating to cash remuneration of $100 or more is based on remuneration paid in a calendar year rather than on remuneration earned during a calendar year. If cash remuneration of $100 or more is paid in a particular calendar year, it is immaterial whether such remuneration is in payment for services performed during the year of payment or during any other year.

(b) The application of paragraph (a) of this section may be illustrated by the following example:

Example. A, a home worker, performs services for X, a manufacturer, in 2003 and 2004. In the performance of the home work A is an employee by reason of section 3121(d)(3)(C). In March 2004, A returns to X articles made by A at home from materials received by A from X in 2003. X pays A cash remuneration of $100 for such work when the finished articles are delivered. The $100 includes $10 which represents remuneration for home work performed by A in 2003. The entire $100 is subject to the taxes. Any additional cash remuneration paid by X to A in 2004 for such services is also subject to the taxes.

(c) In the event an employee receives remuneration in any one calendar year from more than one employer for services performed as a home worker of the character described in paragraph (a) of this section, the regulations in this section are to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such services. This exclusion from wages has no application to remuneration paid for services performed as a home worker who is an employee under section 3121(d)(2) (see § 31.3121(d)–1(c)) relating to common law employees.

(d) Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the $100 cash-remuneration test is met. If the cash remuneration paid in any calendar year by an employer to an employee for services performed as a home worker of the character described in paragraph (a) of this section is $100 or more, then no remuneration, whether in cash or in any medium other than cash, paid by the employer to the employee in such calendar year for such services is excluded from wages under this exception.

(e)(1) For provisions relating to deductions of employee tax or amounts equivalent to the tax from cash payments for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.3102–1.

(2) For provisions relating to the time of payment of wages for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.3121(a)–2.

(3) For provisions relating to records to be kept with respect to payment of wages for services performed as a home worker within the meaning of section 3121(d)(3)(C), see § 31.6001–2.

(f) The provisions of this section apply to any payment for services performed as a home worker within the meaning of section 3121(d)(3)(C) made on or after January 1, 1978. For rules applicable to any payment for services performed as a home worker within the meaning of section 3121(d)(3)(C) made prior to January 1, 1978, see § 31.3121(a)(10)–1 in effect at such time (see 26 CFR part 31 revised as of April 1, 2005).

Par. 7. Section 31.3121(i)–1 is amended as follows:

1. Redesignating the undesignated text as paragraph (a).

2. Remove the language ''quarter'' each place it appears and add ''year'' in its place in newly designated paragraph (a).

3. Adding new paragraph (b).

The addition reads as follows:

§ 31.3121(i)–1 Computation to nearest dollar of cash remuneration for domestic service.

* * * * *

(b) The provisions of this section apply to any cash payment for domestic service in a private home of the employer made on or after January 1, 1994. For rules applicable to any cash payment for domestic service in a private home of the employer made prior to January 1, 1994, see § 31.3121(i)–1 in effect at such time (see 26 CFR part 31 revised as of April 1, 2005).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–16944 Filed 8–25–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–138647–04]

RIN 1545–BE30

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G. In general, these proposed regulations would affect employers that contribute to employees' HSAs.

DATES: Written or electronic comments and requests for a public hearing must be received by November 25, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138647–04), room 5203, Internal Revenue Service, POB 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–138647–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–138647–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Barbara E. Pie at (202) 622–6080; concerning submissions of comments or a request for a public hearing, Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Internal Revenue Code (Code). Under section 4980G of the Code, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees.

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Act), Public Law 108–173, (117 Stat. 2066, 2003) added section 223 to the Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Section 4980G was also added to the Code by the Act. Section 4980G(a) imposes an excise tax on the failure of an employer to make comparable contributions to the HSAs of its employees for a calendar year. Section 4980G(b) provides that rules and requirements similar to section 4980E (the comparability rules for Archer Medical Savings Accounts (Archer MSAs)) apply for purposes of section 4980G. Section 4980E(b) imposes an excise tax equal to 35% of the aggregate amount contributed by the employer to the Archer MSAs of employees during the calendar year if an employer fails to make comparable contributions to the Archer MSAs of its employees in a calendar year. Therefore, if an employer fails to make comparable contributions to the HSAs of its employees during a calendar year, an excise tax equal to 35% of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year is imposed on the employer. See Sections 4980G(a) and (b) and 4980E(b). See also Notice 2004–2 (2004–2 I.R.B. 269), Q & A–32.

Explanation of Provisions

Overview

The proposed regulations clarify and expand on the guidance regarding the comparability rules published in Notice 2004–2 and in Notice 2004–50 (2004–33 I.R.B. 196), Q & A–46 through Q & A–54.

I. Comparable Contributions in General

An employer is not required to contribute to the HSAs of its employees. However, in general, if an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. Comparable participating employees are eligible individuals (as defined in section 223(c)(1)) who have the same category of high deductible health plan (HDHP) coverage. The categories of coverage are self-only HDHP coverage and family HDHP coverage.

These proposed regulations incorporate the rule in Notice 2004–2, Q & A–32 that contributions are comparable if they are either the same amount or the same percentage of the deductible for employees who are eligible individuals with the same category of coverage. An employer is not required to contribute the same amount or the same percentage of the deductible for employees who are eligible individuals with self-only HDHP coverage that it contributes for employees who are eligible individuals with family HDHP coverage. An employer that satisfies the comparability rules by contributing the same amount to the HSAs of all employees who are eligible individuals with self-only HDHP coverage is not required to contribute any amount to the HSAs of employees who are eligible individuals with family HDHP coverage, or to contribute the same percentage of the family HDHP deductible as the amount contributed with respect to self-only HDHP coverage. Similarly, an employer that satisfies the comparability rules by contributing the same amount to the HSAs of all employees who are eligible individuals with family HDHP coverage is not required to contribute any amount to the HSAs of employees who are eligible individuals with self-only HDHP coverage, or to contribute the same percentage of the self-only HDHP deductible as the amount contributed with respect to family HDHP coverage.

II. Calculating Comparable Contributions

The proposed regulations clarify that contributions to the HSAs of certain individuals are not taken into account in determining whether an employer's contributions to the HSAs of its employees satisfy the comparability rules. Specifically, contributions to the HSAs of independent contractors, sole proprietors, and partners in a partnership are not taken into account under the comparability rules. In addition, the comparability rules do not apply to amounts rolled over from an employee's HSA or Archer MSA or to after-tax employee contributions.

The proposed regulations also clarify that the categories of employees for comparability testing are current full-time employees, current part-time employees, and former employees (except for former employees with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)). The proposed regulations provide that the comparability rules apply separately to each of the categories of employees. If an employer contributes to the HSA of any employee in a category of employees, the employer must make comparable contributions to the HSAs of all comparable participating employees within that category. Therefore, the comparability rules apply to a category of employees only if an employer contributes to the HSA of any employee within the category. For example, an employer that makes comparable contributions to the HSAs of all full-time employees who are eligible individuals but does not contribute to the HSA of any employee who is not a full-time employee, satisfies the comparability rules.

The categories of employees set forth in these proposed regulations are the exclusive categories for comparability testing. An employer must make comparable contributions to the HSAs of all comparable participating employees (eligible individuals who are in the same category of employees with the same category of HDHP coverage) during the calendar year without regard to any classification other than these categories. Therefore, the comparability rules do not apply separately to groups of collectively bargained employees. While the comparability rules apply separately to part-time employees, there is no similar rule permitting separate application of the comparability rules to collectively bargained employees. Neither section 4980E nor section 4980G provides an exception to the comparability rules for collectively bargained employees. Accordingly, an employer must make comparable contributions to the HSAs of all comparable participating employees, both those who are covered under a collective bargaining agreement and those who are not covered. Similarly, the comparability rules do not apply separately to management and non-management employees.

The proposed regulations also provide that the comparability rules apply separately to employees who have HSAs and employees who have Archer MSAs. However, if an employee has both an HSA and an Archer MSA, the employer may contribute to either the HSA or the Archer MSA, but not to both.

The proposed regulations incorporate the rule set forth in Q & A–53 of Notice 2004–50, which provides that if an employer limits HSA contributions to employees who are eligible individuals with coverage under an HDHP provided by the employer, the employer is not required to make comparable contributions to the HSAs of employees who are eligible individuals with coverage under an HDHP not provided by the employer. However, if an employer contributes to the HSAs of employees who are eligible individuals with coverage under any HDHP, in addition to the HDHPs provided by the employer, the employer is required to make comparable contributions to the HSAs of all comparable participating employees whether or not covered under employer's HDHP. The proposed regulations also provide that similar rules apply to employer contributions to the HSAs of former employees. For example, if an employer limits HSA contributions to former employees who are eligible individuals with coverage under an HDHP provided by the employer, the employer is not required make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under an HDHP not provided by the employer. However, if an employer contributes to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP, the employer is not required to make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)).

The proposed regulations also incorporate the rule set forth in Q & A–46 of Notice 2004–50, which provides that the comparability rules will not be satisfied if an employer makes HSA contributions in an amount equal to an employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) because if all comparable participating employees do not contribute the same amount to their HSAs, they will not receive comparable contributions to their HSAs. In addition, the comparability rules will not be satisfied if an employer conditions contributions to an employee's HSA on an employee's participation in health assessments, disease management programs or wellness programs because if all comparable participating employees do not elect to participate in all the programs, they will not receive comparable contributions to their HSAs. See Q & A–48 of Notice 2004–50. Similarly, the comparability rules will not be satisfied if an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, because if all comparable participating employees do not meet the age or length of service requirement, they will not receive comparable contributions to their HSAs. See Q & A–50 of Notice 2004–50.

III. Procedures for Making Comparable Contributions

The proposed regulations provide that in determining whether the comparability rules are satisfied, an employer must take into account all full-time and part-time employees who were eligible individuals for any month during the calendar year. An employee is an eligible individual if as of the first day of the month the employee meets all of the requirements set forth in section 223(c). An employer may comply with the comparability rules by contributing amounts at one or more times for the calendar year to the HSAs of employees who are eligible individuals, if contributions are the same amount or the same percentage of the HDHP deductible for employees who are eligible individuals with the same category of coverage and are made at the same time (contributions on a pay-as-you-go basis).

An employer may also satisfy the comparability rules by determining comparable contributions for the calendar year at the end of the calendar year, taking into account all employees who were eligible individuals for any month during the calendar year and contributing the correct amount (a percentage of the HDHP deductible or a specified dollar amount for the same categories of coverage) to the employees' HSAs by April 15th of the following year (contributions on a look-back basis).

If an employer makes comparable HSA contributions on a pay-as-you-go basis, it must do so for each comparable participating employee who is an employee during the time period used to make contributions. For example, if an employer makes HSA contributions each pay period, it must do so for each comparable participating employee who is an employee during the pay period. If an employer makes comparable contributions on a look-back-basis, it must do so for each employee who was a comparable participating employee for any month during the calendar year.

In addition, an employer may make all of its contributions to the HSAs of employees who are eligible individuals at the beginning of the calendar year (contributions on a pre-funded basis). An employer that makes comparable HSA contributions on a pre-funded basis will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the calendar year has received more HSA contributions on a monthly basis than employees who worked the entire calendar year. If an employer makes HSA contributions on a pre-funded basis, it must do so for all employees who are comparable participating employees at the beginning of the calendar year. An employer that makes HSA contributions on a pre-funded basis must make comparable HSA contributions for all employees who are comparable participating employees for any month during the calendar year, including employees hired after the date of initial funding.

If an employee has not established an HSA at the time the employer funds its employee's HSAs, the employer complies with the comparability rules by contributing comparable amounts to the employee's HSA when the employee establishes the HSA, taking into account each month that the employee was a comparable participating employee. However, an employer is not required to make comparable contributions for a calendar year to an employee's HSA if the employee has not established an HSA by December 31st of the calendar year.

The proposed regulations provide that if an employer determines that the comparability rules are not satisfied for a calendar year, the employer may not recoup from an employee's HSA any portion of the employer's contribution to the employee's HSA because under section 223(d)(1)(E), an account beneficiary's interest in an HSA is nonforfeitable. However, an employer may make additional HSA contributions to satisfy the comparability rules. An employer may contribute up until April 15th following the calendar year in which the non-comparable contributions were made. An employer that makes additional HSA contributions to correct non-comparable contributions must also contribute reasonable interest.

IV. Exception to the Comparability Rules for Cafeteria Plans

The legislative history of the Act states that the comparability rules do not apply to HSA contributions that an employer makes through a cafeteria plan. See Conf. Rep. No. 391, 108th Cong., 1st Sess. 843 (2003), 2004

U.S.C.C.A.N. 1808. See also Notice 2004–2, Q & A–32. The nondiscrimination rules in section 125 of the Code apply to HSA contributions (including matching contributions) made through a cafeteria plan. Generally, a cafeteria plan is a written plan under which all participants are employees and participants may choose among two or more benefits consisting of cash and qualified benefits. Unlike the cafeteria plan nondiscrimination rules, the comparability rules are not based upon discrimination in favor of highly compensated or key employees. Therefore, an employer that maintains an HDHP only for highly compensated or key employees and makes HSA contributions through a cafeteria plan only for those eligible employees, does not violate the comparability rules, but may violate the cafeteria plan nondiscrimination rules.

V. Waiver of Excise Tax

In the case of a failure which is due to reasonable cause and not to willful neglect, all or a portion of the excise tax imposed under section 4980G may be waived to the extent that the payment of the tax would be excessive relative to the failure involved. See sections 4980G(b) and 4980E(c).

Proposed Effective Date

It is proposed that these regulations apply to employer contributions made on or after the date the final regulations are published in the **Federal Register**. However, taxpayers may rely on these regulations for guidance pending the issuance of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. This notice of proposed rulemaking does not impose a collection of information on small entities, thus the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. In addition, comments are requested on the application of the comparability rules to employees who are on leave pursuant to the Family and Medical Leave Act of 1993, Public Law 103–3, (107 Stat. 6, 1993, 29 U.S.C. 2601 *et seq.*). Comments are also requested concerning employer matching HSA contributions made through a cafeteria plan. Specifically, whether the ratio of an employer's matching HSA contributions to an employee's salary reduction HSA contributions should be limited, and whether employer matching contributions exceeding a specific limit should be subject to the section 4980G comparability rules. 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.

Drafting Information

The principal author of these proposed regulations is Barbara E. Pie, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *
Section 54.4980G–1 also issued under 26 U.S.C. 4980G. * * *

Par. 2. Sections 54.4980G–0 through 54.4980G–5 are added to read as follows:

§ 54.4980G–0 Table of contents.

This section contains the questions for § 54.4980G–1 through § 54.4980G–5.

§ 54.4980G–1 Failure of employer to make comparable health savings account contributions.

Q–1. What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

Q–2. What are the categories of HDHP coverage for purposes of applying the comparability rules?

Q–3. What is the testing period for making comparable contributions to employees' HSAs?

Q–4. How is the excise tax computed if employer contributions do not satisfy the comparability rules for a calendar year?

§ 54.4980G–2 Employer contribution defined.

Q–1. Do the comparability rules apply to amounts rolled over from an employee's HSA or Archer Medical Savings Account (Archer MSA)?

Q–2. If an employee requests that his or her employer deduct after-tax amounts from the employee's compensation and forward these amounts as employee contributions to the employee's HSA, do the comparability rules apply to these amounts?

§ 54.4980G–3 Definition of employee for comparability testing.

Q–1. Do the comparability rules apply to contributions that an employer makes to the HSAs of independent contractors?

Q–2. May a sole proprietor who is an eligible individual contribute to his or her own HSA without contributing to the HSAs of his or her employees who are eligible individuals?

Q–3. Do the comparability rules apply to contributions by a partnership to a partner's HSA?

Q–4. How are members of controlled groups treated when applying the comparability rules?

Q–5. What are the categories of employees for comparability testing?

Q–6. Is an employer permitted to make comparable contributions only to the HSAs of comparable participating employees who have coverage under the employer's HDHP?

Q–7. If an employee and his or her spouse are eligible individuals who work for the same employer and one employee-spouse has family coverage for both employees under the employer's HDHP, must the employer make comparable contributions to the HSAs of both employees?

Q–8. Does an employer that makes HSA contributions only for non-management employees who are eligible individuals, but not for management employees who are eligible individuals or that makes HSA contributions only for management employees who are eligible individuals but not for non-management employees who are eligible individuals satisfy the requirement that the employer make comparable contributions?

Q–9. If an employer contributes to the HSAs of former employees who are eligible individuals, do the comparability rules apply to these contributions?

Q–10. Is an employer permitted to make comparable contributions only to the HSAs of comparable participating former employees who have coverage under the employer's HDHP?

Q–11. If an employer contributes only to the HSAs of former employees who are

eligible individuals with coverage under the employer's HDHP, must the employer make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1))?

Q–12. How do the comparability rules apply if some employees have HSAs and other employees have Archer MSAs?

§ 54.4980G–4 Calculating comparable contributions.

Q–1. What are comparable contributions?

Q–2. How do the comparability rules apply to employer contributions to employees' HSAs if some employees work full-time during the entire calendar year, and other employees work full-time for less than the entire calendar year?

Q–3. How does an employer comply with the comparability rules when some employees who are eligible individuals do not work for the employer during the entire calendar year?

Q–4. May an employer make all of its contributions to the HSAs of its employees who are eligible individuals at the beginning of the calendar year (*i.e.*, on a pre-funded basis) instead of contributing on a pay-as-you-go or on a look-back basis?

Q–5. Must an employer use the same contribution method as described in Q & A–3 and Q & A–4 of this section for all employees who were comparable participating employees for any month during the calendar year?

Q–6. How does an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs?

Q–7. If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed?

Q–8. Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions?

Q–9. If an employer conditions contributions by the employer to an employee's HSA on an employee's participation in health assessments, disease management programs or wellness programs and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules?

Q–10. If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules?

Q–11. If an employer makes additional contributions to the HSAs of all comparable participating employees who qualify for the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

Q–12. If an employer's contributions to an employee's HSA result in non-comparable contributions, may the employer recoup the excess amount from the employee's HSA?

§ 54.4980G–5 HSA comparability rules and cafeteria plans and waiver of excise tax.

Q–1. If an employer makes contributions through a section 125 cafeteria plan to the HSA of each employee who is an eligible individual are the contributions subject to the comparability rules?

Q–2. If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the amount of the employee's HSA contribution or a percentage of the amount of the employee's HSA contribution (*i.e.*, *matching contributions*), are the contributions subject to the section 4980G comparability rules?

Q–3. If an employer provides HDHP coverage through a cafeteria plan, but the employer's HSA contributions are not provided through the cafeteria plan, do the cafeteria plan nondiscrimination rules or the comparability rules apply to the HSA contributions?

Q–4. If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA, unless the employees elect cash, are the contributions subject to the comparability rules?

Q–5. May all or part of the excise tax imposed under section 4980G be waived?

§ 54.4980G–1 Failure of employer to make comparable health savings account contributions.

Q–1. What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

A–1. If an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. See Q & A–1 in § 54.4980G–4 for the definition of comparable contributions. *Comparable participating employees* are eligible individuals (as defined in section 223(c)(1)) who have the same category of high deductible health plan (HDHP) coverage. See sections 4980G(b) and 4980E(d)(3). See section 223(c)(2) and (g) for the definition of an HDHP. See also Q & A–5 in § 54.4980G–3 for the categories of employees and Q & A–2 in this section for the categories of HDHP coverage.

Q–2. What are the categories of HDHP coverage for purposes of applying the comparability rules?

A–2. The categories of coverage are self-only HDHP coverage and family HDHP coverage. See sections 4980G(b) and 4980E(d)(3)(B).

Q–3. What is the testing period for making comparable contributions to employees' HSAs?

A–3. To satisfy the comparability rules, an employer must make comparable contributions for the calendar year to the HSAs of employees who are comparable participating employees. See section 4980G(a).

Q–4. How is the excise tax computed if employer contributions do not satisfy the comparability rules for a calendar year?

A–4. (a) *Computation of tax.* If employer contributions do not satisfy the comparability rules for a calendar year, the employer is subject to an excise tax equal to 35% of the aggregate amount contributed by the employer to HSAs for that period.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–4:

Example. In this *Example*, assume that the HDHP provided by Employer A satisfies the definition of an HDHP for the 2007 calendar year. During the 2007 calendar year, Employer A has 8 employees who are eligible individuals with self-only coverage under an HDHP provided by Employer A. The deductible for the HDHP is $2,000. For the 2007 calendar year, Employer A contributes $2,000 each to the HSAs of two employees and $1,000 each to the HSAs of the other six employees, for total HSA contributions of $10,000. Employer A's contributions do not satisfy the comparability rules. Therefore, Employer A is subject to an excise tax of $3,500 (*i.e.*, 35% x $10,000) for its failure to make comparable contributions to its employees' HSAs.

§ 54.4980G–2 Employer contribution defined.

Q–1. Do the comparability rules apply to amounts rolled over from an employee's HSA or Archer Medical Savings Account (Archer MSA)?

A–1. No. The comparability rules do not apply to amounts rolled over from an employee's HSA or Archer MSA.

Q–2. If an employee requests that his or her employer deduct after-tax amounts from the employee's compensation and forward these amounts as employee contributions to the employee's HSA, do the comparability rules apply to these amounts?

A–2. No. Section 106(d) provides that amounts contributed by an employer to an eligible employee's HSA shall be treated as employer-provided coverage for medical expenses and are excludible from the employee's gross income up to the limit in section 223(b). After-tax employee contributions to an HSA are not subject to the comparability rules because they are not employer contributions under section 106(d).

§ 54.4980G–3 Definition of employee for comparability testing.

Q–1. Do the comparability rules apply to contributions that an employer makes to the HSAs of independent contractors?

A–1. No. The comparability rules apply only to contributions that an employer makes to the HSAs of employees.

Q–2. May a sole proprietor who is an eligible individual contribute to his or her own HSA without contributing to the HSAs of his or her employees who are eligible individuals?

A–2. (a) *Sole proprietor not an employee.* Yes. The comparability rules apply only to contributions made by an employer to the HSAs of employees. Because a sole proprietor is not an employee, the comparability rules do not apply to contributions he or she makes to his or her own HSA. However, if a sole proprietor contributes to any employee's HSA, he or she must make comparable contributions to the HSAs of all comparable participating employees. In determining whether the comparability rules are satisfied, contributions that a sole proprietor makes to his or her own HSA are not taken into account.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–2:

Example. In a calendar year, B, a sole proprietor is an eligible individual and contributes $1,000 to B's own HSA. B also contributes $500 for the same calendar year to the HSA of each employee who is an eligible individual. The comparability rules are not violated by B's $1,000 contribution to B's own HSA.

Q–3. Do the comparability rules apply to contributions by a partnership to a partner's HSA?

A–3. (a) *Partner not an employee.* No. Contributions by a partnership to a bona fide partner's HSA are not subject to the comparability rules because the contributions are not contributions by an employer to the HSA of an employee. The contributions are treated as either guaranteed payments under section 707(c) or distributions under section 731. However, if a partnership contributes to the HSAs of employees who are not partners, the comparability rules apply to those contributions.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–3:

Example. (i) Partnership X is a limited partnership with three equal individual partners, A (a general partner), B (a limited partner), and C (a limited partner). C is to be paid $300 annually for services rendered to Partnership X in her capacity as a partner without regard to partnership income (a section 707(c)) guaranteed payment). D and E are the only employees of Partnership X and are not partners in Partnership X. A, B, C, D, and E are eligible individuals and each has an HSA. During Partnership X's Year 1 taxable year, which is also a calendar year, Partnership X makes the following contributions—

(A) A $300 contribution to each of A's and B's HSAs which are treated as section 731 distributions to A and B;

(B) A $300 contribution to C's HSA in lieu of paying C the guaranteed payment directly; and

(C) A $200 contribution to each of D's and E's HSAs, who are comparable participating employees.

(ii) Partnership X's contributions to A's and B's HSAs are section 731 distributions, which are treated as cash distributions. Partnership X's contribution to C's HSA is treated as a guaranteed payment under section 707(c). The contribution is not excludible from C's gross income under section 106(d) because the contribution is treated as a distributive share of partnership income for purposes of all Code sections other than sections 61(a) and 162(a), and a guaranteed payment to a partner is not treated as compensation to an employee. Thus, Partnership X's contributions to the HSAs of A, B, and C are not subject to the comparability rules. Partnership X's contributions to D's and E's HSAs are subject to the comparability rules because D and E are employees of Partnership X and are not partners in Partnership X. Partnership X's contributions satisfy the comparability rules.

Q–4. How are members of controlled groups treated when applying the comparability rules?

A–4. All persons or entities treated as a single employer under section 414(b), (c), (m), or (o) are treated as one employer. See sections 4980G(b) and 4980E(e).

Q–5. What are the categories of employees for comparability testing?

A–5. (a) *Categories.* The categories of employees for comparability testing are as follows—

(1) Current full-time employees;

(2) Current part-time employees; and

(3) Former employees (except for former employees with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)).

(b) *Part-time and full-time employees.* Part-time employees are customarily employed for fewer than 30 hours per week and full-time employees are customarily employed for 30 or more hours per week. See sections 4980G(b) and 4980E(d)(4)(A) and (B).

(c) *In general.* The categories of employees in paragraph (a) of this Q & A–5 are the exclusive categories for comparability testing. An employer must make comparable contributions to the HSAs of all *comparable participating employees* (eligible individuals who are in the same category of employees with the same category of HDHP coverage) during the calendar year without regard to any classification other than these categories. Thus, the comparability rules do not apply separately to collectively bargained and non-collectively bargained employees. Similarly, the comparability rules do not apply separately to groups of collectively bargained employees.

Q–6. Is an employer permitted to make comparable contributions only to the HSAs of comparable participating employees who have coverage under the employer's HDHP?

A–6. (a) *Employer-provided HDHP coverage.* If during a calendar year, an employer contributes to the HSA of any employee who is an eligible individual covered under an HDHP provided by the employer, the employer is required to make comparable contributions to the HSAs of all comparable participating employees with coverage under any HDHP provided by the employer. An employer that contributes only to the HSAs of employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to HSAs of employees who are eligible individuals but are not covered under the employer's HDHP. However, an employer that contributes to the HSA of any employee who is an eligible individual with coverage under any HDHP, in addition to the HDHPs provided by the employer, must make comparable contributions to the HSAs of all comparable participating employees whether or not covered under the employer's HDHP.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A–6:

Example 1. In a calendar year, Employer C offers an HDHP to its full-time employees. Most full-time employees are covered under Employer C's HDHP and Employer C makes comparable contributions only to these employees' HSAs. Employee W, a full-time employee of Employer C and an eligible individual, is covered under an HDHP provided by W's spouse's employer and not under Employer C's HDHP. Employer C is not required to make comparable contributions to W's HSA.

Example 2. In a calendar year, Employer D does not offer an HDHP. Several full-time employees, who are eligible individuals, have HSAs. Employer D contributes to these employees' HSAs. Employer D must make comparable contributions to the HSAs of all full-time employees who are eligible individuals.

Example 3. In a calendar year, Employer E offers an HDHP to its full-time employees. Most full-time employees are covered under Employer E's HDHP and Employer E makes

comparable contributions to these employees' HSAs and also to the HSAs of full-time employees who are eligible individuals and who are not covered under Employer E's HDHP. Employee H, a full-time employee of Employer E and a comparable participating employee, is covered under an HDHP provided by H's spouse's employer and not under Employer E's HDHP. Employer E must make comparable contributions to H's HSA.

Q–7. If an employee and his or her spouse are eligible individuals who work for the same employer and one employee-spouse has family coverage for both employees under the employer's HDHP, must the employer make comparable contributions to the HSAs of both employees?

A–7. (a) *In general.* If the employer makes contributions only to the HSAs of employees who are eligible individuals covered under its HDHP, the employer is not required to contribute to the HSAs of both employee-spouses. The employer is required to contribute to the HSA of the employee-spouse with coverage under the employer's HDHP, but is not required to contribute to the HSA of the employee-spouse covered under the employer's HDHP by virtue of his or her spouse's coverage. However, if the employer contributes to the HSA of any employee who is an eligible individual with coverage under any HDHP, the employer must make comparable contributions to the HSAs of both employee-spouses if they are both eligible individuals. If an employer is required to contribute to the HSAs of both employee-spouses, the employer is not required to contribute amounts in excess of the annual contribution limits in section 223(b).

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A–7:

Example 1. In a calendar year, Employer F offers an HDHP to its full-time employees. Most full-time employees are covered under Employer F's HDHP and Employer F makes comparable contributions only to these employees' HSAs. Employee H, a full-time employee of Employer F and an eligible individual has family coverage under Employer F's HDHP for H and H's spouse, Employee W, who is also a full-time employee of Employer F and an eligible individual. Employer F is required to make comparable contributions to H's HSA, but is not required to make comparable contributions to W's HSA.

Example 2. In a calendar year, Employer G offers an HDHP to its full-time employees. Most full-time employees are covered under Employer G's HDHP and Employer G makes comparable contributions to these employees' HSAs and to the HSAs of full-time employees who are eligible individuals but are not covered under Employer G's HDHP. Employee W, a full-time employee of Employer G and an eligible individual, has family coverage under Employer G's HDHP for W and W's spouse, Employee H, who is also a full-time employee of Employer G and an eligible individual. Employer G must make comparable contributions to W's HSA and to H's HSA.

Q–8. Does an employer that makes HSA contributions only for non-management employees who are eligible individuals, but not for management employees who are eligible individuals or that makes HSA contributions only for management employees who are eligible individuals but not for non-management employees who are eligible individuals satisfy the requirement that the employer make comparable contributions?

A–8. (a) *Management* v. *non-management.* No. If management employees and non-management employees are comparable participating employees, the comparability rules are not satisfied. However, if non-management employees are comparable participating employees and management employees are not comparable participating employees, the comparability rules may be satisfied. But see Q & A–1 in § 54.4980G–5 on contributions made through a cafeteria plan.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A–8:

Example 1. In a calendar year, Employer H maintains an HDHP covering all management and non-management employees. Employer H contributes $1,000 for the calendar year to the HSA of each non-management employee who is an eligible individual covered under its HDHP. Employer H does not contribute to the HSAs of any of its management employees who are eligible individuals covered under its HDHP. The comparability rules are not satisfied.

Example 2. In a calendar year, Employer J maintains an HDHP for non-management employees only. Employer J does not maintain an HDHP for its management employees. Employer J contributes $1,000 for the calendar year to the HSA of each non-management employee who is an eligible individual with coverage under its HDHP. Employer J does not contribute to the HSAs of any of its non-management employees not covered under its HDHP or to the HSAs of any of its management employees. The comparability rules are satisfied.

Example 3. In a calendar year, Employer K maintains an HDHP for management employees only. Employer K does not maintain an HDHP for its non-management employees. Employer K contributes $1,000 for the calendar year to the HSA of each management employee who is an eligible individual with coverage under its HDHP. Employer K does not contribute to the HSAs of any of its management employees not covered under its HDHP or to the HSAs of any of its non-management employees. The comparability rules are satisfied.

Q–9. If an employer contributes to the HSAs of former employees who are eligible individuals, do the comparability rules apply to these contributions?

A–9. (a) *Former employees.* Yes. The comparability rules apply to contributions an employer makes to former employees' HSAs. Therefore, if an employer contributes to any former employee's HSA, it must make comparable contributions to the HSAs of all comparable participating former employees (former employees who are eligible individuals with the same category of HDHP coverage). However, an employer is not required to make comparable contributions to the HSAs of former employees with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)). See Q & A–5 and Q & A–11 in this section. The comparability rules apply separately to former employees because they are a separate category of covered employee. See Q & A–5 in this section.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A–9:

Example 1. In a calendar year, Employer L contributes $1,000 for the calendar year to the HSA of each current employee who is an eligible individual with coverage under any HDHP. Employer L does not contribute to the HSA of any former employee who is an eligible individual. Employer L's contributions satisfy the comparability rules.

Example 2. In a calendar year, Employer M contributes to the HSAs of current employees and former employees who are eligible individuals covered under any HDHP. Employer M contributes $750 to the HSA of each current employee with self-only HDHP coverage and $1,000 to the HSA of each current employee with family HDHP coverage. Employer M also contributes $300 to the HSA of each former employee with self-only HDHP coverage and $400 to the HSA of each former employee with family HDHP coverage. Employer M's contributions satisfy the comparability rules.

Q–10. Is an employer permitted to make comparable contributions only to the HSAs of comparable participating former employees who have coverage under the employer's HDHP?

A–10. If during a calendar year, an employer contributes to the HSA of any former employee who is an eligible individual covered under an HDHP provided by the employer, the employer is required to make comparable contributions to the HSAs of all former employees who are comparable participating former employees with coverage under any HDHP provided by the employer. An employer that contributes only to the HSAs of former

employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to the HSAs of former employees who are eligible individuals and who are not covered under the employer's HDHP. However, an employer that contributes to the HSA of any former employee who is an eligible individual with coverage under any HDHP, even if that coverage is not the employer's HDHP, must make comparable contributions to the HSAs of all former employees who are eligible individuals whether or not covered under an HDHP of the employer.

Q–11. If an employer contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP, must the employer make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1))?

A–11. No. An employer that contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1)).

Q–12. How do the comparability rules apply if some employees have HSAs and other employees have Archer MSAs?

A–12. (a) *HSAs and Archer MSAs.* The comparability rules apply separately to employees who have HSAs and employees who have Archer MSAs. However, if an employee has both an HSA and an Archer MSA, the employer may contribute to either the HSA or the Archer MSA, but not to both.

(b) *Examples.* The following examples illustrate the rules in paragraph (a) of this Q & A–12:

Example 1. In a calendar year, Employer N contributes $600 to the Archer MSA of each employee who is an eligible individual and who has an Archer MSA. Employer N contributes $500 for the calendar year to the HSA of each employee who is an eligible individual and who has an HSA. If an employee has both an Archer MSA and an HSA, Employer N contributes to the employee's Archer MSA and not to the employee's HSA. Employee X has an Archer MSA and an HSA. Employer N contributes $600 for the calendar year to X's Archer MSA but does not contribute to X's HSA. Employer N's contributions satisfy the comparability rules.

Example 2. Same facts as *Example 1,* except that if an employee has both an Archer MSA and an HSA, Employer N contributes to the employee's HSA and not to the employee's Archer MSA. Employer N contributes $500 for the calendar year to X's HSA but does not contribute to X's Archer MSA. Employer N's contributions satisfy the comparability rules.

§ 54.4980G–4 Calculating comparable contributions.

Q–1. What are comparable contributions?

A–1. (a) *Definition.* Contributions are comparable if they are either the same amount or the same percentage of the deductible under the HDHP for employees who are eligible individuals with the same category of coverage. Employees with self-only HDHP coverage are tested separately from employees with family HDHP coverage. See Q & A–1 and Q & A–2 in § 54.4980G–1. An employer is not required to contribute the same amount or the same percentage of the deductible for employees who are eligible individuals with self-only HDHP coverage that it contributes for employees who are eligible individuals with family HDHP coverage. An employer that satisfies the comparability rules by contributing the same amount to the HSAs of all employees who are eligible individuals with self-only HDHP coverage is not required to contribute any amount to the HSAs of employees who are eligible individuals with family HDHP coverage, or to contribute the same percentage of the family HDHP deductible as the amount contributed with respect to self-only HDHP coverage. Similarly, an employer that satisfies the comparability rules by contributing the same amount to the HSAs of all employees who are eligible individuals with family HDHP coverage is not required to contribute any amount to the HSAs of employees who are eligible individuals with self-only HDHP coverage, or to contribute the same percentage of the self-only HDHP deductible as the amount contributed with respect to family HDHP coverage.

(b) *Examples.* Assume that the HDHPs in *Example 1* through *Example 7* satisfy the definition of an HDHP for the 2007 calendar year. The following examples illustrate the rules in paragraph (a) of this Q & A–1:

Example 1. In the 2007 calendar year, Employer A offers its full-time employees three health plans, including an HDHP with self-only coverage and a $2,000 deductible. Employer A contributes $1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer A makes no HSA contributions for employees with family HDHP coverage or for employees who do not elect the employer's self-only HDHP. Employer A's HSA contributions satisfy the comparability rules.

Example 2. In the 2007 calendar year, Employer B offers its employees an HDHP with a $3,000 deductible for self-only coverage and a $4,000 deductible for family coverage. Employer B contributes $1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer B contributes $2,000 for the calendar year to the HSA of each employee who is an eligible individual electing the family HDHP coverage. Employer B's HSA contributions satisfy the comparability rules.

Example 3. In the 2007 calendar year, Employer C offers its employees an HDHP with a $1,500 deductible for self-only coverage and a $3,000 deductible for family coverage. Employer C contributes $1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer C contributes $1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the family HDHP coverage. Employer C's HSA contributions satisfy the comparability rules.

Example 4. In the 2007 calendar year, Employer D offers its employees an HDHP with a $1,500 deductible for self-only coverage and a $3,000 deductible for family coverage. Employer D contributes $1,500 for the calendar year to the HSA of each employee who is an eligible individual electing the self-only HDHP coverage. Employer D contributes $1,000 for the calendar year to the HSA of each employee who is an eligible individual electing the family HDHP coverage. Employer D's HSA contributions satisfy the comparability rules.

Example 5. (i) In the 2007 calendar year, Employer E maintains two HDHPs. Plan A has a $2,000 deductible for self-only coverage and a $4,000 deductible for family coverage. Plan B has a $2,500 deductible for self-only coverage and a $4,500 deductible for family coverage. For the calendar year, Employer E makes contributions to the HSA of each full-time employee who is an eligible individual covered under Plan A of $600 for self-only coverage and $1,000 for family coverage. Employer E satisfies the comparability rules, if it makes either of the following contributions for the 2007 calendar year to the HSA of each full-time employee who is an eligible individual covered under Plan B—

(A) $600 for each full-time employee with self-only coverage and $1,000 for each full-time employee with family coverage; or

(B) $750 for each employee with self-only coverage and $1,125 for each employee with family coverage (the same percentage of the deductible Employer E contributes for full-time employees covered under Plan A, 30% of the deductible for self-only coverage and 25% of the deductible for family coverage).

(ii) Employer E also makes contributions to the HSA of each part-time employee who is an eligible individual covered under Plan A of $300 for self-only coverage and $500 for family coverage. Employer E satisfies the

comparability rules, if it makes either of the following contributions for the 2007 calendar year to the HSA of each part-time employee who is an eligible individual covered under Plan B—

(A) $300 for each part-time employee with self-only coverage and $500 for each part-time employee with family coverage; or

(B) $375 for each part-time employee with self-only coverage and $563 for each part-time employee with family coverage (the same percentage of the deductible Employer E contributes for part-time employees covered under Plan A, 15% of the deductible for self-only coverage and 12.5% of the deductible for family coverage).

Example 6. (i) In the 2007 calendar year, Employer F maintains an HDHP. The HDHP has a $2,500 deductible for self-only coverage, and the following family coverage options—

(A) A $3,500 deductible for self plus one dependent;

(B) A $3,500 deductible for self plus spouse;

(C) A $3,500 deductible for self plus two or more dependents;

(D) A $3,500 deductible for self plus spouse and one dependent; and

(E) A $3,500 deductible for self plus spouse and two or more dependents.

(ii) Employer F makes the following contributions for the calendar year to the HSA of each full-time employee who is an eligible individual covered under the HDHP—

(A) $750 for self-only coverage;

(B) $1,000 for self plus one dependent;

(C) $1,000 for self plus spouse;

(D) $1,000 for self plus two or more dependents;

(E) $1,000 for self plus spouse and one dependent; and

(F) $1,000 for self plus spouse and two or more dependents.

(iii) Employer F's HSA contributions satisfy the comparability rules.

Example 7. (i) In the 2007 calendar year, Employer G maintains an HDHP. The HDHP has a $1,800 deductible for self-only coverage and the following family coverage options—

(A) A $3,500 deductible for self plus one dependent;

(B) A $3,800 deductible for self plus spouse;

(C) A $4,000 deductible for self plus two or more dependents;

(D) A $4,500 deductible for self plus spouse and one dependent; and

(E) A $5,000 deductible for self plus spouse and two or more dependents.

(ii) Employer G makes the following contributions for the calendar year to the HSA of each full-time employee who is an eligible individual covered under the HDHP—

(A) $360 for self-only coverage;

(B) $875 for self plus one dependent;

(C) $950 for self plus spouse;

(D) $1,000 for self plus two or more dependents;

(E) $1,125 for self plus spouse and one dependent; and

(F) $1,250 for self plus spouse and two or more dependents.

(iii) Employer G's HSA contributions satisfy the comparability rules because Employer G has made contributions that are the same percentage of the deductible for eligible employees with the same category of coverage (20% of the deductible for eligible employees with self-only coverage and 25% of the deductible for eligible employees with family coverage). Employer G could also satisfy the comparability rules by contributing the same dollar amount for each category of coverage.

Example 8. In a calendar year, Employer H offers its employees an HDHP and a health flexible spending arrangement (health FSA). The health FSA reimburses employees for medical expenses as defined in section 213(d). Some of Employer H's employees have coverage under the HDHP and the health FSA. For the calendar year, Employer H contributes $500 to the HSA of each of employee who is an eligible individual, but does not contribute to the HSAs of employees who have coverage under the health FSA or under a spouse's health FSA. In addition, some of Employer H's employees have coverage under the HDHP and are enrolled in Medicare. Employer H does not contribute to the HSAs of employees who are enrolled in Medicare. The employees who have coverage under the health FSA or under a spouse's health FSA are not comparable participating employees because they are not eligible individuals under section 223(c)(1). Similarly, the employees who are enrolled in Medicare are not comparable participating employees because they are not eligible individuals under section 223(b)(7) and (c)(1). Therefore, employees who have coverage under the health FSA or under a spouse's health FSA and employees who are enrolled in Medicare are excluded from comparability testing. See sections 4980G(b) and 4980E. Employer H's contributions satisfy the comparability rules.

Q–2. How do the comparability rules apply to employer contributions to employees' HSAs if some employees work full-time during the entire calendar year, and other employees work full-time for less than the entire calendar year?

A–2. Employer contributions to the HSAs of employees who work full-time for less than twelve months satisfy the comparability rules if the contribution amount is comparable when determined on a month-to-month basis. For example, if the employer contributes $240 to the HSA of each full-time employee who works the entire calendar year, the employer must contribute $60 to the HSA of a full-time employee who works three months of the calendar year. The rules set forth this Q & A–2 apply to employer contributions made on a pay-as-you-go basis or on a look-back-basis as described in Q & A–3 in this section. See sections 4980G(b) and 4980E(d)(2)(B).

Q–3. How does an employer comply with the comparability rules when some employees who are eligible individuals do not work for the employer during the entire calendar year?

A–3. (a) *In general.* In determining whether the comparability rules are satisfied, an employer must take into account all full-time and part-time employees who were employees and eligible individuals for any month during the calendar year. (Full-time and part-time employees are tested separately. See Q & A–5 in § 54.4980G–3.) There are two methods to comply with the comparability rules when some employees who are eligible individuals do not work for the employer during the entire calendar year; contributions may be made on a pay-as-you-go basis or on a look-back basis. See Q & A–9 through Q & A–11 in § 54.4980G–3 for the rules regarding comparable contributions to the HSAs of former employees.

(b) *Contributions on a pay-as-you-go basis.* An employer may comply with the comparability rules by contributing amounts at one or more times for the calendar year to the HSAs of employees who are eligible individuals, if contributions are the same amount or the same percentage of the HDHP deductible for employees who are eligible individuals as of the first day of the month with the same category of coverage and are made at the same time. Contributions made at the employer's usual payroll interval for different groups of employees are considered to be made at the same time. For example, if salaried employees are paid monthly and hourly employees are paid bi-weekly, an employer may contribute to the HSAs of hourly employees on a bi-weekly basis and to the HSAs of salaried employees on a monthly basis. An employer may change the amount that it contributes to the HSAs of employees at any point. However, the changed contribution amounts must satisfy the comparability rules.

(c) *Examples.* The following examples illustrate the rules in paragraph (b) of this Q & A–3:

Example 1. (i) Beginning on January 1st, Employer J contributes $50 per month on the first day of each month to the HSA of each employee who is an eligible individual. Employer J does not contribute to the HSAs of former employees. In mid-March of the same year, Employee X, an eligible individual, terminates employment after Employer J has contributed $150 to X's HSA. After X terminates employment, Employer J does not contribute additional amounts to X's HSA. In mid-April of the same year, Employer J hires Employee Y, an eligible individual, and contributes $50 to Y's HSA in May and $50 in June. Effective in July of the same year, Employer J stops contributing to the HSAs of all employees and makes no contributions to the HSA of any employee for the months of July through December. In August, Employer J hires Employee Z, an eligible individual. Employer J does not

contribute to Z's HSA. After Z is hired, Employer J does not hire additional employees. As of the end of the calendar year, Employer J has made the following HSA contributions to its employees' HSAs—

(A) Employer J contributed $150 to X's HSA;

(B) Employer J contributed $100 to Y's HSA;

(C) Employer J did not contribute to Z's HSA; and

(D) Employer J contributed $300 to the HSA of each employee who was an eligible individual and employed by Employer from January through June.

(ii) Employer J's contributions satisfy the comparability rules.

Example 2. In a calendar year, Employer K offers its employees an HDHP and contributes on a monthly pay-as-you go-basis to the HSAs of employees who are eligible individuals with coverage under Employer K's HDHP. In the calendar year, Employer K contributes $50 per month to the HSA of each of employee with self-only HDHP coverage and $100 per month to the HSA of each employee with family HDHP coverage. From January 1st through March 30th of the calendar year, Employee X is an eligible individual with self-only HDHP coverage. From April 1st through December 30th of the calendar year, X is an eligible individual with family HDHP coverage. For the months of January, February and March of the calendar year, Employer K contributes $50 per month to X's HSA. For the remaining months of the calendar year, Employer K contributes $100 per month to X's HSA. Employer K's contributions to X's HSA satisfy the comparability rules.

(d) *Contributions on a look-back basis.* An employer may also satisfy the comparability rules by determining comparable contributions for the calendar year at the end of the calendar year, taking into account all employees who were eligible individuals for any month during the calendar year and contributing the correct amount (a percentage of the HDHP deductible or a specified dollar amount for the same categories of coverage) to the employees' HSAs.

(e) *Example.* The following example illustrates the rules in paragraph (d) of this Q & A–3:

Example. In a calendar year, Employer L offers its employees an HDHP and contributes on a look-back-basis to the HSAs of employees who are eligible individuals with coverage under Employer L's HDHP. Employer L contributes $600 (*i.e.* $50 per month) for the calendar year to the HSA of each of employee with self-only HDHP coverage and $1,200 (*i.e.*, $100 per month) for the calendar year to the HSA of each employee with family HDHP coverage. From January 1st through June 30th of the calendar year, Employee Y is an eligible individual with family HDHP coverage. From July 1st through December 31, Y is an eligible individual with self-only HDHP coverage. Employer L contributes $900 on a look-back-basis for the calendar year to Y's HSA ($100 per month for the months of January through June and $50 per month for the months of July through December). Employer L's contributions to Y's HSA satisfy the comparability rules.

Q–4. May an employer make all of its contributions to the HSAs of its employees who are eligible individuals at the beginning of the calendar year (*i.e.*, on a pre-funded basis) instead of contributing on a pay-as-you-go or on a look-back basis?

A–4. (a) *Contributions on a pre-funded basis.* Yes. An employer may make all of its contributions to the HSAs of its employees who are eligible individuals at the beginning of the calendar year. An employer that pre-funds the HSAs of its employees will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the calendar year has received more contributions on a monthly basis than employees who have worked the entire calendar year. See Q & A–12 in this section. Under section 223(d)(1)(E), an account beneficiary's interest in an HSA is nonforfeitable. An employer must make comparable contributions for all employees who are comparable participating employees for any month during the calendar year, including employees who are eligible individuals hired after the date of initial funding. An employer that makes HSA contributions on a pre-funded basis may also contribute on a pre-funded-basis to the HSAs of employees who are eligible individuals hired after the date of initial funding. Alternatively, an employer that has pre-funded the HSAs of comparable participating employees may contribute to the HSAs of employees who are eligible individuals hired after the date of initial funding on a pay-as-you-go basis or on a look-back basis. An employer that makes HSA contributions on a pre-funded basis must use the same contribution method for all employees who are eligible individuals hired after the date of initial funding.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–4:

Example. (i) On January 1, Employer M contributes $1,200 for the calendar year on a pre-funded basis to the HSA of each of employee who is an eligible individual. In mid-May, Employer M hires Employee B, an eligible individual. Therefore, Employer M is required to make comparable contributions to B's HSA beginning in June. Employer M satisfies the comparability rules with respect to contributions to B's HSA if it makes HSA contributions in any one of the following ways—

(A) Pre-funding B's HSA by contributing $700 to B's HSA;

(B) Contributing $100 per month on a pay-as-you-go basis to B's HSA; or

(C) Contributing to B's HSA at the end of the calendar year taking into account each month that B was an eligible individual and employed by Employer M.

(ii) If Employer M hires additional employees who are eligible individuals after initial funding, it must use the same contribution method for these employees that it used to contribute to B's HSA.

Q–5. Must an employer use the same contribution method as described in Q & A–3 and Q & A–4 of this section for all employees who were comparable participating employees for any month during the calendar year?

A–5. Yes. If an employer makes comparable HSA contributions on a pay-as-you-go basis, it must do so for each employee who is a comparable participating employee during the pay period. If an employer makes comparable contributions on a look-back basis, it must do so for each employee who was a comparable participating employee for any month during the calendar year. If an employer makes HSA contributions on a pre-funded basis, it must do so for all employees who are comparable participating employees at the beginning of the calendar year. An employer that contributes on a pre-funded basis must make comparable HSA contributions for all employees who are comparable participating employees for any month during the calendar year, including employees who are eligible individuals hired after the date of initial funding. See Q & A–4 in this section for rules regarding contributions for employees hired after initial funding.

Q–6. How does an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs?

A–6. (a) *Employee has not established an HSA.* If an employee has not established an HSA at the time the employer funds its employees' HSAs, the employer complies with the comparability rules by contributing comparable amounts to the employee's HSA when the employee establishes the HSA, taking into account each month that the employee was a comparable participating employee. However, an employer is not required to make comparable contributions for a calendar year to an employee's HSA if the employee has not established an HSA by December 31st of the calendar year.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–6:

Example. Beginning on January 1st, Employer N contributes $500 per calendar year on a pay-as-you-go basis to the HSA of each employee who is an eligible individual. Employee C is an eligible individual during the entire calendar year but does not establish an HSA until March. Notwithstanding C's delay in establishing an HSA, Employer N must make up the missed HSA contributions for January and February by April 15th of the following calendar year.

Q–7. If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed?

A–7. (a) *Computing HSA contributions.* The correct percentage is determined by rounding to nearest 1/100th of a percentage point and the dollar amount is determined by rounding to the nearest whole dollar.

(b) Example. The following example illustrates the rules in paragraph (a) of this Q & A–7:

Example. In this *Example*, assume that the HDHP provided by Employer P satisfies the definition of an HDHP for the 2007 calendar year. In the 2007 calendar year, Employer P maintains two HDHPs. Plan A has a deductible of $3,000 for self-only coverage. Employer P contributes $1,000 for the calendar year to the HSA of each employee covered under Plan A. Plan B has a deductible of $3,500 for self-only coverage. Employer P satisfies the comparability rules if it makes either of the following contributions for the 2007 calendar year to the HSA of each employee who is an eligible individual with self-only coverage under Plan B—

(i) $1,000; or

(ii) $1,167 (33.33% of the deductible rounded to the nearest whole dollar amount).

Q–8. Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions?

A–8. No. If all comparable participating employees do not contribute the same amount to their HSAs and, consequently, do not receive comparable contributions to their HSAs, the comparability rules are not satisfied, notwithstanding that the employer offers to make available the same contribution amount to each comparable participating employee. But see Q & A–1 in § 54.4980G–5 on contributions to HSAs made through a cafeteria plan.

Q–9. If an employer conditions contributions by the employer to an employee's HSA on an employee's participation in health assessments, disease management programs or wellness programs and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules?

A–9. No. If all comparable participating employees do not elect to participate in all the programs and consequently, all comparable participating employees do not receive comparable contributions to their HSAs, the employer contributions fail to satisfy the comparability rules. But see Q & A–1 in § 54.4980G–5 on contributions made to HSAs through a cafeteria plan.

Q–10. If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules?

A–10. No. If all comparable participating employees do not meet the age or length of service requirement, all comparable participating employees do not receive comparable contributions to their HSAs and the employer contributions fail to satisfy the comparability rules.

Q–11. If an employer makes additional contributions to the HSAs of all comparable participating employees who qualify for the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

A–11. No. If all comparable participating employees do not qualify for the additional HSA contributions under section 223(b)(3), all comparable participating employees do not receive comparable contributions to their HSAs, and the employer contributions fail to satisfy the comparability rules.

Q–12. If an employer's contributions to an employee's HSA result in non-comparable contributions, may the employer recoup the excess amount from the employee's HSA?

A–12. No. An employer may not recoup from an employee's HSA any portion of the employer's contribution to the employee's HSA. Under section 223(d)(1)(E), an account beneficiary's interest in an HSA is nonforfeitable. However, an employer may make additional HSA contributions to satisfy the comparability rules. An employer may contribute up until April 15th following the calendar year in which the non-comparable contributions were made. An employer that makes additional HSA contributions to correct non-comparable contributions must also contribute reasonable interest. However, an employer is not required to contribute amounts in excess of the annual contribution limits in section 223(b).

§ 54.4980G–5 HSA comparability rules and cafeteria plans and waiver of excise tax.

Q–1. If an employer makes contributions through a section 125 cafeteria plan to the HSA of each employee who is an eligible individual are the contributions subject to the comparability rules?

A–1. No. The comparability rules do not apply to HSA contributions that an employer makes through a section 125 cafeteria plan. However, contributions to an HSA made under a cafeteria plan are subject to the section 125 nondiscrimination rules (eligibility rules, contributions and benefits tests and key employee concentration tests). See section 125(b), (c) and (g) and Prop. Treas. Reg. § 1.125–1, Q & A–19, (49 FR 19321).

Q–2. If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the amount of the employee's HSA contribution or a percentage of the amount of the employee's HSA contribution (*i.e.*, *matching contributions*), are the contributions subject to the section 4980G comparability rules?

A–2. No. The comparability rules do not apply to HSA contributions that an employer makes through a section 125 cafeteria plan. Thus, where matching contributions are made by an employer through a cafeteria plan, the contributions are not subject to the comparability rules of section 4980G. However, contributions, including matching contributions, to an HSA made under a cafeteria plan are subject to the section 125 nondiscrimination rules (eligibility rules, contributions and benefits tests and key employee concentration tests). See Q & A–1 in this section.

Q–3. If an employer provides HDHP coverage through a cafeteria plan, but the employer's HSA contributions are not provided through the cafeteria plan, do the cafeteria plan nondiscrimination rules or the comparability rules apply to the HSA contributions?

A–3. (a) *HDHP provided through cafeteria plan.* The comparability rules in section 4980G apply to the HSA contributions. The cafeteria plan nondiscrimination rules apply only to HSA contributions made through a cafeteria plan irrespective of whether the HDHP is provided through a cafeteria plan.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A–3:

Example. Employer A provides HDHP coverage through its cafeteria plan. Employer A automatically contributes to the HSA of each employee who is an eligible individual with HDHP coverage through the cafeteria plan. Employees make no election with respect to Employer A's HSA contributions and have no right to receive cash or other taxable benefits in lieu of the HSA contributions. Employer A contributes only to the HSAs of employees who have elected HDHP coverage through the cafeteria plan. The comparability rules apply to Employer A's HSA contributions because the HSA contributions are not made through the cafeteria plan.

Q–4. If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA, unless the employees elect cash, are the contributions subject to the comparability rules?

A–4. No. The comparability rules do not apply to employer contributions to an HSA made through a cafeteria plan. See Q & A–1 in this section.

Q–5. May all or part of the excise tax imposed under section 4980G be waived?

A–5. In the case of a failure which is due to reasonable cause and not to willful neglect, all or a portion of the excise tax imposed under section 4980G may be waived to the extent that the payment of the tax would be excessive relative to the failure involved. See sections 4980G(b) and 4980E(c).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–106–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia proposes revisions to the Code of West Virginia (W. Va. Code) and the Code of State Regulations (CSR) as authorized by several bills passed during the State's 2005 Legislative Session. West Virginia is also proposing an amendment that affects the State's regulations concerning erosion protection zones (EPZ) associated with durable rock fills. The State is revising its program to be consistent with certain corresponding Federal requirements, and to include other amendments at its own initiative. The amendments include, among other things, changes to the State's surface mining and blasting regulations as authorized by Committee Substitute for House Bill 2723; various statutory changes to the State's approved program as a result of the passage of Committee Substitute for House Bill 3033 and House Bills 2333 and 3236; the submission of a draft policy regarding the State's EPZ requirement and requesting that the Office of Surface Mining (OSM) reconsider its previous decision concerning EPZ; State water rights and replacement policy identifying the timing of water supply replacement; the revised Permittee's Request For Release form; and the submission of a Memorandum of Agreement (MOA) between the West Virginia Department of Environmental Protection (WVDEP), Division of Mining and Reclamation, and the West Virginia Division of Natural Resources, Wildlife Resources Section that is intended to partially resolve a required program amendment relating to planting arrangements for Homestead post-mining land use.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on September 26, 2005. If requested, we will hold a public hearing on the amendment on September 20, 2005. We will accept requests to speak at a hearing until 4 p.m. (local time), on September 12, 2005.

ADDRESSES: You may submit comments, identified by WV–106–FOR, by any of the following methods:

- E-mail: *chfo@osmre.gov.* Include WV–106–FOR in the subject line of the message;
- Mail/Hand Delivery: Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301; or
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Docket: You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, West Virginia 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Internet: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a

State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letters dated June 13, 2005 (Administrative Record Numbers WV–1419, WV–1420, and WV–1421), the WVDEP submitted amendments to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendments consist of several bills passed during West Virginia's 2005 Legislative Session and a draft policy concerning EPZ associated with durable rock fills.

House Bill (HB) 2333 amends the W. Va. Code by adding new Article 27 entitled the Environmental Good Samaritan Act (Sections 22–27–1 through 22–27–12). HB 2333 was adopted by the Legislature on March 24, 2005, and signed into law by the Governor on April 6, 2005, with an effective date of June 22, 2005. In its letter, the WVDEP stated that HB 2333 establishes a program to encourage voluntary reclamation of lands adversely affected by mining activities by limiting the liability that could arise as a result of the voluntary reclamation of abandoned lands or reduction abatement of water pollution.

Committee Substitute for HB 2723 authorizes (at paragraph g) amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38–2 and (at paragraph i) amendments to the Surface Mining Blasting Rule at CSR 199–1. This bill was passed by the Legislature on April 8, 2005, and approved by the Governor on May 3, 2005, with an effective date from the date of passage. We note that some of the amendments to CSR 38–2 and CSR 199–1 are intended to address required program amendments that are codified in the Federal regulations at 30 CFR 948.16(a), (sss), (wwww), (fffff), (iiiii), (jjjjj), (kkkkk), (lllll), (ooooo), (ppppp), and (rrrrr).

Committee Substitute for HB 3033 amends the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) at W. Va. Code Section 22–3–11 concerning the State's special reclamation tax. This bill was passed by the Legislature on April 1, 2005, and signed by the Governor on April 18, 2005, with an effective date of April 1, 2005. In its letter, the WVDEP stated that HB 3033 extends the temporary special reclamation tax that funds the State's alternative bonding system for an additional 18 months (at W. Va. Code 22–3–11(h)(1)) and provides additional duties for the WVDEP Secretary in managing the State's alternative bonding system (at W. Va. Code 22–3–11(h)(2), (3), and (4)). We note that OSM previously approved West Virginia's temporary special reclamation tax on December 28, 2001 (66 FR 67446), with additional modification on May 29, 2002 (67 FR 37610, 37613–37614). The State's current extension of that temporary tax by an additional 18 months does not need OSM's specific approval because the State has only lengthened the time period of the temporary tax. Except as discussed below, the State has not modified any duties or functions under the approved West Virginia program, and the change is in keeping with the intent of our original approvals. Therefore, we are not seeking public comment on the State's extension of the temporary tax from thirty nine to fifty seven months at W. Va. Code 22–3–11(h)(1). The extension took effect from the date of passage of Committee Substitute for HB 3033, on April 1, 2005. In addition, we are not seeking public comment on the State's new language at W. Va. Code 22–3–(h)(3) and (h)(4). These new provisions only direct the Secretary of the WVDEP to conduct various studies and authorize the Secretary of the WVDEP to propose legislative rules concerning its bonding program as appropriate. These provisions do not modify any duties or functions under the approved West Virginia program and do not, therefore, require OSM's approval. However, we are seeking public comment on the State's provisions at W. Va. Code 22–3–11(h)(2)(A) and (B). Under these new provisions, the WVDEP Secretary will be required to pursue cost effective alternative water treatment strategies; and conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund.

HB 3236 amends the WVSCMRA by adding new W. Va. Code Section 22–3–11a concerning the special reclamation tax, and adding new Section 22–3–32a concerning the special tax on coal. HB 3236 was passed by the Legislature on April 9, 2005, and approved by the Governor on May 2, 2005, with an effective date of April 9, 2005. HB 3236 provides that the special reclamation tax and the special tax, which is used to administer the State's approved regulatory program, are applicable to thin seam coal, and the special reclamation tax is subject to the WV Tax Crimes and Penalties Act and the WV Tax Procedure and Administration Act.

In addition, WVDEP, submitted Committee Substitute for HB 3033 which contains strikethroughs and underscoring showing the actual language that has been added and deleted from the WVSCMRA, as a result of the passage of Enrolled Committee Substitute for HB 3033 discussed above (Administrative Record Number WV–1422).

WVDEP submitted a MOA dated September 2003, between the WVDEP, Division of Mining and Reclamation, and the West Virginia Division of Natural Resources, Wildlife Resources Section (Administrative Record Number WV–1405). This MOA outlines responsibilities of both agencies in reviewing surface and underground coal mining permit applications; evaluating lands unsuitable for mining petitions; developing wildlife planting plans as part of reclamation plans of permit applications; and restoring, protecting and enhancing fish and wildlife on mined lands within the State. The MOA was developed in response to a 30 CFR Part 732 (Part 732) notification issued by OSM on March 6, 1990, (Administrative Record Number WV–834) in which OSM stated that the State program did not require that minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by State agencies responsible for the administration of forestry and wildlife programs as required by 30 CFR 816/817.116(b)(3)(i). The West Virginia Division of Forestry has concurred with the State's tree stocking and groundcover standards at CSR 38–2–9.8.g. However, OSM maintains that the Wildlife Resources Section still has to concur with the wildlife planting arrangement standards. The WVDEP submitted the MOA in response to that part of the outstanding Part 732 notification and, as discussed below, to satisfy part of an outstanding required amendment at 30 CFR 948.16(ooooo).

The Federal regulations at 30 CFR 948.16(ooooo) provide that the WVDEP

must consult with and obtain the approval of the West Virginia Division of Forestry and the Wildlife Resources Section of the West Virginia Division of Natural Resources on the new stocking standards and planting arrangements for Homesteading at CSR 38–2–7.5.o.2. The submission of the MOA is to resolve the part of the required amendment relating to planting arrangements. The State also revised its rules earlier at CSR 38–2–9.3.g to provide that a professional wildlife biologist employed by the Division of Natural Resources must develop the planting plan. OSM approved that revision in the **Federal Register** on February 8, 2005 (70 FR 6582). WVDEP advised OSM that it has consulted with the Division of Forestry concerning the stocking standards for Homesteading. According to WVDEP, the Division of Forestry will be submitting a letter explaining its position with regard to those stocking standards (Administrative Record Number WV–1423). Upon receipt of the letter, it will be included in the Administrative Record and made available for public review.

WVDEP also submitted the Permittee's Request for Release form dated March 2005 (Administrative Record Number WV–1424). This form is being submitted in response to an OSM Part 732 notification dated July 22, 1997 (Administrative Record Number WV–1071). In that notification, OSM advised the State that the Federal regulations at 30 CFR 800.40(a)(3) were amended to require that each application for bond release include a written, notarized statement by the permittee affirming that all applicable reclamation requirements specified in the permit have been completed. OSM notified WVDEP that the State regulations at CSR 38–2–12.2 do not contain such a requirement. In response, the State revised its bond release form by adding new item Number 11, which requires that all copies of the Permittee's Request For Release form include the following: ''11. A notarized statement by the permittee that all applicable reclamation requirements specified in the permit have been completed.''

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, West Virginia proposes the following amendments.

1. House Bill 2333

HB 2333 amends the W. Va. Code by adding a new article Sections 22–27–1 through 12 to provide as follows:

Article 27. Environmental Good Samaritan Act

22–27–1. Declaration of policy and purpose.

This article is intended to encourage the improvement of land and water adversely affected by mining, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of the citizens of this state and to eliminate or abate hazards to health and safety. It is the intent of the Legislature to encourage voluntary reclamation of lands adversely affected by mining. The purpose of this article is to improve water quality and to control and eliminate water pollution resulting from mining extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution. This article is not intended to limit the liability of a person who by law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

22–27–2. Legislative findings.

The Legislature finds and declares as follows:

(1) The state's long history of mining has left some lands and waters unreclaimed and polluted.

(2) These abandoned lands and polluted waters are unproductive, diminish the tax base and are serious impediments to the economic welfare and growth of this state.

(3) The unreclaimed lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

(4) The state of West Virginia does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

(5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities who do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

(6) It is in the best interest of the health, safety and welfare of the people of this state and the environment to encourage reclamation of the abandoned lands and abatement of water pollution.

(7) That this act will encourage and promote the reclamation of these properties.

22–27–3. Definitions.

As used in this article unless used in a context that clearly requires a different meaning, the term:

(a) ''Abandoned lands'' means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.

(b) ''Consideration'' means something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this article, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

(c) ''Department'' means the West Virginia department of environmental protection.

(d) ''Eligible land'' means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition or causing water pollution and for which no person has a continuing reclamation or water pollution abatement obligation.

(e) ''Eligible landowner'' means a landowner that provides access to or use of the project work area at no cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(f) ''Eligible project sponsor'' means a person that provides equipment, materials or services at no cost or at cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(g) ''Landowner'' means a person who holds either legal or equitable interest in real property.

(h) ''Mineral'' means any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining. This includes, but is not limited to, limestone, dolomite, sand, gravel, slate, argillite, diabase, gneiss, micaceous sandstone known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc ore, vermiculite, clay and anthracite and bituminous coal.

(i) ''Permitted activity site'' means a site permitted by the department of environmental protection under the provisions of article two, three or four of this chapter.

(j) ''Person'' means a natural person, partnership, association, association members, corporation, an agency, instrumentality or entity of federal or state government or other legal entity recognized by law as the subject of rights and liabilities.

(k) ''Project work area'' means that land necessary for a person to complete a reclamation project or a water pollution abatement project.

(l) ''Reclamation project'' means the restoration of eligible land to productive use by regrading and revegetating the land to stable contours that blend in and complement the drainage pattern of the surrounding terrain with no highwalls, spoil piles or depressions to accumulate water, or to decrease or eliminate discharge of water pollution.

(m) ''Water pollution'' means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water located in the state.

(n) ''Water pollution abatement facilities'' means the methods for treatment or abatement of water pollution located on

eligible lands. These methods include, but are not limited to, a structure, system, practice, technique or method constructed, installed or followed to reduce, treat or abate water pollution.

(o) ''Water pollution abatement project'' means a plan for treatment or abatement of water pollution located on eligible lands.

22–27–4. Eligibility and project inventory.

(a) *General rule.*—An eligible landowner or eligible project sponsor who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or a water pollution abatement project in accordance with the provisions of this article is immune from civil liability and may raise the protections afforded by the provisions of this article in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability. An eligible landowner or eligible project sponsor is only entitled to the protections and immunities provided by this article after meeting all eligibility requirements and compliance with a detailed written plan of the proposed reclamation project or water pollution abatement project which is submitted to and approved by the department. The project plan shall include the objective of the project and a description of the work to be performed to accomplish the objective and shall, additionally, identify the project location, project boundaries, project participants and all landowners.

(b) *Notice.*—The department shall give written notice by certified mail to adjacent property owners and riparian land owners located downstream of the proposed project, provide Class IV public notice of the proposed project in a newspaper of general circulation, published in the locality of the proposed project, and shall give public notice in the state register. The project sponsor may also provide public notice. Any person having an interest which may be adversely affected by the proposed project has the right to file written objections to the department within thirty days after receipt of the written notice or within thirty days after the last publication of the Class IV notice. The department shall provide to the project sponsor a copy of each written objection received during the public comment period, which shall conclude at the expiration of the applicable thirty-day period provided for in this section.

(c) *Advice.*—The department may provide advice to the landowner or to other interested persons based upon the department's knowledge and experience in performing reclamation projects and water pollution abatement projects.

(d) *Departmental review.*—The department shall review each proposed reclamation project and approve the project if the department determines the proposed project:

(1) Will result in the appropriate reclamation and regrading of the land according to all applicable laws and regulations;

(2) Will result in the appropriate revegetation of the site;

(3) Is not likely to result in pollution as defined in article eleven of this chapter; and

(4) Is likely to improve the water quality and is not likely to make the water pollution worse.

(e) *Project inventory.*—The department shall develop and maintain a system to inventory and record each project, the project location and boundaries, each landowner and each person identified in a project plan provided to the department. The inventory shall include the results of the department's review of the proposed project and, where applicable, include the department's findings under subsection (b), section ten of this article.

(f) *Appeal.*—A person aggrieved by a department decision to approve or disapprove a reclamation project or a water pollution abatement project has the right to file an appeal with the environmental quality board under the provisions of article one, chapter twenty-two-b of this code.

22–27–5. Landowner liability limitation and exceptions.

(a) *General rule.*—Except as specifically provided in subsections (b) and (c) of this section, an eligible landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

(1) Is immune from liability for any injury or damage suffered by persons working under the direct supervision of the project sponsor while such persons are within the project work area;

(2) Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of the project sponsor which occurs during the implementation of the reclamation project or the water pollution abatement project;

(3) Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project;

(4) Is immune from liability for any pollution resulting from a reclamation project or water pollution abatement project;

(5) Is immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the eligible landowner negligently damages or destroys the water pollution abatement facilities or denies access to the project sponsor who is responsible for the operation, maintenance or repair the water pollution abatement facilities.

(b) *Duty to warn.*—The eligible landowner shall warn the project sponsor of known, latent, dangerous conditions located on the project work area which are not the subject of the reclamation project or the water pollution abatement project. Nothing in this article shall limit an eligible landowner's liability which results from the eligible landowner's failure to warn of such known, latent, dangerous conditions.

(c) *Exceptions to immunity.*—Nothing in this article may limit an eligible landowner's liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

(1) For injury or damage resulting from the landowner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(2) Where the landowner accepts or requires consideration for allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

(3) For the landowner's unlawful activities.

(4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

22–27–6. Project sponsor liability limitation and exceptions.

(a) *General rule.*—Except as specifically provided in subsection (b) of this section, a project sponsor who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

(1) Is immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project;

(2) Is immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project, Provided that the project sponsor implements, operates, and maintains the project in accordance with the plans approved by the department;

(3) Is immune from liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) *Exceptions.*—

(1) Nothing in this article shall limit in any way the liability of a project sponsor which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(A) For injury or damage resulting from the project sponsor's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(B) For the person's unlawful activities.

(C) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this article shall limit in any way the liability of a person who the department has found to be in violation of any other provision or provisions of this chapter.

22–27–7. Permits and zoning.

Nothing in this article may be construed as waiving any existing permit requirements or waiving any local zoning requirements.

22–27–8. Relationship to federal and state programs.

The provisions of this article shall not prevent the department from enforcing requirements necessary or imposed by the Federal Government as a condition to receiving or maintaining program authorization, delegation, primacy or federal funds.

22–27–9. General permits.

If the department determines it will further the purposes of this article, the department may issue a general permit for each reclamation project or water pollution abatement project, which shall:

(1) Encompass all of the activities included in the reclamation project or water pollution abatement project.

(2) Be issued in place of any individual required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

22–27–10. Exceptions.

(a) *General rule.*—Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for consideration or who receives some other benefit through a contract or any person who through a consent order and agreement or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site is not eligible nor may receive the benefit of the protections and immunities available under this article.

(b) *Projects near mining or coal refuse sites.*—This article does not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under articles two, three or four of this chapter unless:

(1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started; and

(2) The department finds:

(A) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law;

(B) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations; and

(3) The department issues a written notice of its findings and the approval of the project.

(c) *Projects in lieu of civil or administrative penalties.*—This article shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil or administrative penalties.

22–27–11. Water supply replacement.

A public or private water supply affected by contamination or the diminution caused by the implementation of a reclamation project or the implementation of a water pollution abatement project shall be restored or replaced by the department with an alternate source of water adequate in quantity and quality for the purposes served by the water supply.

22–27–12. Rules.

The department may propose legislative rules in accordance with article three, chapter twenty-nine-a of this code as needed to implement the provisions of this article.

2. Committee Substitute for House Bill 2723

This bill authorizes amendments to the West Virginia Surface Mining Reclamation Rules at CSR 38–2 and the Surface Mining Blasting Rule at CSR 199–1.

Amendments to CSR 38–2

a. CSR 38–2–2.92. This definition is new, and provides as follows:

2.92 Previously mined areas means land affected by surface mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this rule.

In its amendment, the WVDEP stated that the revision is intended to resolve an outstanding Part 732 issue relating to previously mined areas.

b. CSR 38–2–3.29.a. This provision concerns incidental boundary revisions (IBRs) and is amended by deleting the following language from the end of the first sentence: ''is the only practical alternative to recovery of unanticipated reserves or necessary to enhance reclamation efforts or environmental protection.''

In its submittal of this amendment, the WVDEP stated that the amendment in intended to delete language that was not approved by OSM (see the February 9, 1999, **Federal Register**, 64 FR 6201, at Finding 10, page 6208).

As amended, CSR 38–2–3.29.a provides as follows:

3.29.a. Incidental Boundary Revisions (IBRs) shall be limited to minor shifts or extensions of the permit boundary into non-coal areas or areas where any coal extraction is incidental to or of only secondary consideration to the intended purpose of the IBR or where it has been demonstrated to the satisfaction of the Secretary that limited coal removal on areas immediately adjacent to the existing permit. IBRs shall also include the deletion of bonded acreage which is overbonded by another valid permit and for which full liability is assumed in writing by the successive permittee. Incidental Boundary Revisions shall not be granted for any prospecting operations, or to abate a violation where encroachment beyond the permit boundary is involved, unless an equal amount of acreage covered under the IBR for encroachment is deleted from the permitted area and transferred to the encroachment area.

c. CSR 38–2–5.4.a. This provision concerns general sediment control provisions, and is amended by adding language to incorporate by reference the U.S. Department of Agriculture, Soil Conservation Service (now known as the Natural Resources Conservation Service), Technical Release No. 60, ''Earth Dams and Reservoirs.'' As amended, Subsection 5.4.a provides as follows:

Sediment control or other water retention structures shall be constructed in appropriate locations for the purposes of controlling sedimentation. All runoff from the disturbed area shall pass through a sedimentation control system. All such systems or other water retaining structures used in association with the mining operation shall be designed, constructed, located, maintained, and used in accordance with this rule and in such a manner as to minimize adverse hydrologic impacts in the permit and adjacent areas, to prevent material damage outside the permit area and to assure safety to the public. The U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, October 1985), ''Earth Dams and Reservoirs,'' Technical Release No. 60 (TR–60) is hereby incorporated by reference. Copies may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, order No. PB 87–57509/AS. Copies can be inspected at the OSM Headquarters Office, Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1951 Constitution Avenue, NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

d. CSR 38–2–5.4.b.9. This provision concerns freeboard of sediment control structures, and is amended by adding a proviso that impoundments meeting the Class B or C criteria for dams in ''Earth Dams and Reservoirs'', TR–60 shall comply with the freeboard hydrograph criteria in ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60. As amended, Subsection 5.4.b.9 provides as follows:

5.4.b.9. Provide adequate freeboard to resist overtopping by waves or sudden increases in volume and adequate slope protection against surface erosion and sudden drawdown. Provided, however, impoundments meeting the Class B or C criteria for dams in ''Earth Dams and Reservoirs'', TR–60 shall comply with the freeboard hydrograph criteria in ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60.

e. CSR 38–2–5.4.b.10. This provision concerns minimum static safety factor, and has been amended by deleting language in the first sentence related to loss of life or property damage, and adding in its place language concerning impoundments meeting the Class B or C criteria for dams contained in ''Earth Dams and Reservoirs,'' TR–60. As amended, Subsection 5.4.b.10 provides as follows:

5.4.b.10. Provide that an impoundment meeting the size or other criteria of 30 CFR 77.216(a) or W. Va. Code [Section] 22–14 et seq., or Impoundments meeting the Class B or C criteria for dams contained in ''Earth Dams and Reservoirs'', TR–60, shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage

saturation conditions, and a seismic safety factor of at least 1.2. Impoundments not meeting the size or other criteria of 30 CFR 77.216 (a) or W. Va. Code [Section] 22–14 *et seq.*, except for a coal mine waste impounding structure, and located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

f. CSR 38–2–5.4.b.12. This provision concerns stable foundations of sediment control structures, and has been amended by adding language at the end of the final sentence to clarify that the laboratory testing of foundation material shall be performed to determine the design requirements for foundation stability. As amended, Subsection 5.4.b.12 provides as follows:

5.4.b.12. Provide for stable foundations during all phases of construction and operation and be designed based on adequate and accurate information on the foundation conditions. For structures meeting the criteria of paragraph 5.4.b.10 of this subdivision, provide foundation investigations and any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

g. CSR 38–2–5.4.c.7. This provision is new and provides as follows:

5.4.c.7. Impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 shall comply with the following: (1) ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60; (2) the emergency spillway hydrograph criteria in the ''Minimum Emergency Spillway Hydrologic Criteria'' table in TR–60, or larger event specified by the Secretary; and (3) and the requirements of this subdivision.

h. CSR 38–2–5.4.d.4. This provision, concerning design and construction certification of coal refuse impoundments and embankment type impoundments, has been amended by adding language concerning impoundments meeting the Class B or C criteria for dams. As amended, Subsection 5.4.d.4 provides as follows:

5.4.d.4. Design and construction certification of coal refuse impoundments and embankment type impoundments meeting or exceeding the size requirements or other criteria of Federal MSHA regulations at 30 CFR 77.216 (a) or impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 may be performed only by a registered professional engineer experienced in the design and construction of impoundments.

i. CSR 38–2–5.4.e.1. This provision concerns the inspection of impoundments and sediment control structures, and has been amended by adding language concerning impoundments meeting the Class B or C criteria for dams. As amended, Subsection 5.4.e.1 provides as follows:

5.4.e.1. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect each impoundment or sediment control structure provided, that a licensed land surveyor may inspect those impoundments or sediment control or other water retention structures which do not meet the size or other criteria of 30 CFR 77.216(a), Impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 or W. Va. Code [Section] 22–14 et seq., and which are not constructed of coal processing waste or coal refuse. The professional engineer, licensed land surveyor, or specialist shall be experienced in the construction of impoundments and sediment control structures.

j. CSR 38–2–5.4.f. This provision concerns examinations of embankments, and has been amended by adding language concerning impoundments meeting the Class B or C criteria for dams. As amended, Subsection 5.4.f provides as follows:

5.4.f. Examinations. Embankments subject to Federal MSHA regulations at 30 CFR 77.216 or impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 must be examined in accordance with 77.216–3 of said regulations. Other embankments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Examination reports shall be retained for review at or near the operation.

In its submittal of the amendments concerning sediment control or other water retention structures, the WVDEP stated that the amendments are intended to resolve the outstanding Part 732 issue that impoundments meeting the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60, comply with (1) the freeboard criteria in TR–60, (2) have a minimum static safety factor of 1.5 for a normal pool with steady-state seepage saturation conditions, and a seismic safety factor of at least 1.2, (3) emergency spillway hydrologic criteria and the emergency spillway hydrograph criteria in TR–60, and (4) specify the certification, inspections, and examinations of requirements of these structures (see the Part 732 letter dated July 22, 1997, Administrative Record Number WV–1071). The WVDEP stated that the Federal counterpart is found in 30 CFR 816.49 concerning impoundments.

k. CSR 38–2–7.4.b.1.A.1. This provision concerns the development of a planting plan and long-term management plan for commercial forestry. The first sentence of this provision is amended by clarifying that the professional forester must be a West Virginia registered professional forester.

l. CSR 38–2–7.4.b.1.A.3. This provision concerns the commercial species plan for commercial forestry and is amended in the first sentence to clarify that the registered professional forester must be a West Virginia registered professional forester.

m. CSR 38–2–7.4.b.1.A.3.(b). This provision concerns the creation of a certified geology map relating to commercial forestry areas. The provision is amended by revising the kinds of information pertaining to physical and chemical properties of strata that must be provided in the permit application. As amended, Subsection 7.4.b.1.A.3.(b) provides as follows:

7.4.b.1.A.3.(b). An approved geologist shall create a certified geology map showing the location, depth, and volume of all strata in the mined area, the physical and chemical properties of each stratum to include rock texture, pH, potential acidity and alkalinity. For each stratum proposed as soil medium, the following information shall also be provided: total soluble salts, degree of weathering, extractable levels of phosphorus, potassium, calcium, magnesium, manganese, and iron and other properties required by the Secretary to select best available materials for mine soils.

In its submittal of its amendment to this provision, the WVDEP stated that the amendment is to clarify that only the material proposed to be the resulting soil medium needs the additional analysis.

n. CSR 38–2–7.4.b.1.A.4. This provision concerns the commercial forestry long-term management plan and is amended in the first sentence by adding the words ''West Virginia'' immediately before the words ''registered professional forester.''

o. CSR 38–2–7.4.b.1.B.1. This provision concerns a commercial forestry and forestry reclamation plan, and is amended by deleting the word ''certified'' immediately before the phrase ''professional soil scientist'' in the first sentence.

In its submittal of its amendment to this provision, the WVDEP stated that the word ''certified'' is being deleted because West Virginia does not have a certification system for soil scientist.

p. CSR 38–2–7.4.b.1.C.1. This provision concerns commercial forestry areas, and is amended by adding the word ''areas'' immediately following the words ''commercial forestry'' in the first sentence, and by revising the standards for slopes of the postmining landform. As amended, Subsection 7.4.b.1.C.1 provides as follows:

7.4.b.1.C.1. For commercial forestry areas, the Secretary shall assure that the postmining landscape is rolling, and diverse. The backfill on the mine bench shall be configured to create a postmining topography that includes the principles of land forming (e.g., the creation of swales) to reflect the premining irregularities in the land. Postmining landform shall provide a rolling topography with slopes between 5% and 20% with an average slope of 10% to 15%. The elevation change between the ridgeline and the valleys shall be varied. The slope lengths shall not exceed 500 feet. The minimum thickness of backfill, including mine soil, placed on the pavement of the basal seam mined in any particular area shall be ten (10) feet.

q. CSR 38–2–7.4.b.1.C.2. This provision concerns commercial forestry areas and is amended by adding the word ''areas'' immediately after the phrase ''commercial forestry'' in the first sentence.

r. CSR 38–2–7.4.b.1.C.3. This provision concerns commercial forestry areas and is amended by deleting the words ''in areas'' in the first sentence adding the word ''areas'' in their place.

s. CSR 38–2–7.4.b.1.C.4. This provision concerns commercial forestry areas and is amended by adding the word ''areas'' immediately following the words ''commercial forestry'' in the first sentence. In addition, the first sentence is also amended by deleting the word ''permitted'' and replacing that word with the words ''commercial forestry.''

t. CSR 38–2–7.4.b.1.C.5. This provision concerns forestry areas and is amended by adding the word ''areas'' immediately after the word ''forestry'' in the first sentence.

The WVDEP stated in its submittal that this change has been made to ''address a concern of the QA/QC Panel that the Configuration of regrade area is still too flat (Reference: Directors Meeting October 15, 2003).''

u. CSR 38–2–7.4.b.1.D.6. This provision concerns soil substitutes, and is amended by adding the words ''and is in accordance with 14.3.c of this rule'' at the end of the first sentence. As amended, the first sentence at CSR 38–2–7.4.b.1.D.6 provides as follows:

7.4.b.1.D.6. Before approving the use of soil substitutes, the Secretary shall require the permittee to demonstrate that the selected overburden material is suitable for restoring land capability and productivity and is in accordance with 14.3.c of this rule.

The WVDEP stated in its submittal that this change has been made to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(wwww). The Federal regulations at 30 CFR 948.16(wwww) provide that CSR 38–2–7.4.b.1.D.6 be amended to provide that the substitute material is equally suitable for sustaining vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

v. CSR 38–2–7.4.b.1.D.8. This provision concerns the final surface material used as the commercial forestry mine soil and has been amended in the first sentence by adding the word ''areas'' immediately after the phrase ''[f]or commercial forestry.''

w. CSR 38–2–7.4.b.1.D.9. This provision concerns the final surface material used as the forestry mine soil and has been amended in the first sentence by adding the word ''areas'' immediately after the phrase ''[f]or forestry.''

x. CSR 38–2–7.4.b.1.D.11. This provision concerns forestry mine soil, and has been amended by adding the phrase ''except for valley fill faces'' at the end of the sentence. As amended, Subsection 7.4.b.1.D.11 provides that ''[f]orestry mine soil shall, at a minimum, be placed on all areas achieving AOC, except for valley fill faces.''

In its submittal, the WVDEP stated that the amendment is intended to provide clarification.

y. CSR 38–2–7.4.b.1.H.1. This provision concerns tree species and compositions for commercial forestry areas and forestry areas. The list of hardwoods in this provision is amended by deleting ''white and red oaks, other native oaks'' and adding in their place ''white oak, chestnut oak, northern red oak, and black oak'' and by adding the words ''basswood, cucumber magnolia'' to the list. In addition, the word ''areas'' is added immediately following the words ''[f]or forestry'' in the third sentence. In addition, the list of hardwoods for forestry areas is amended by deleting the words ''white and red oaks, other native oaks'' and adding in their place the words ''white oak, chestnut oak, northern red oak, black oak,'' and by adding ''basswood'' and ''cucumber magnolia'' to the list. As amended, Subsection 7.4.b.1.H.1 provides as follows:

7.4.b.1.H.1. Commercial tree and nurse tree species selection shall be based on site-specific characteristics and long-term goals outlined in the forest management plan and approved by a registered professional forester. For commercial forestry areas, the Secretary shall assure that all areas suitable for hardwoods are planted with native hardwoods at a rate of 500 seedlings per acre in continuous mixtures across the permitted area with at least six (6) species from the following list: white oak, chestnut oak, northern red oak, black oak, white ash, yellow-poplar, basswood, cucumber magnolia, black walnut, sugar maple, black cherry, or native hickories. For forestry areas, the Secretary shall assure that all areas suitable for hardwoods are planted with native hardwoods at a rate of 450 seedlings per acre in continuous mixtures across the permitted area with at least three (3) or four (4) species from the following list: white oak, chestnut oak, northern red oak, black oak, white ash, yellow-poplar, basswood, cucumber magnolia, black walnut, sugar maple, black cherry, or native hickories.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment is intended to provide clarification for oaks and mixtures.

z. CSR 38–2–7.4.b.1.H.2. This provision has been amended in the first sentence by adding the word ''areas'' immediately after the phrase ''[f]or commercial forestry.''

aa. CSR 38–2–7.4.b.1.H.6. This provision has been amended in the first sentence by adding the word ''areas'' immediately after the phrase ''[f]or commercial forestry.''

bb. CSR 38–2–7.4.b.1.I.1. Subsection 7.4.b.1.I.1 has been amended in the last sentence by deleting the word ''certified'' immediately before the words ''soil scientist'' and adding in its place the word ''professional.'' As amended, the sentence provides as follows: ''[b]efore approving Phase I bond release, a professional soil scientist shall certify, and the Secretary shall make a written finding that the mine soil meets these criteria.''

cc. CSR 38–2–7.4.b.1.I.2. Subsection 7.4.b.1.I.2 has been amended in two places by adding the word ''areas.'' The first sentence has been amended by adding the word ''areas'' immediately after the phrase ''for commercial forestry.'' The second from last sentence has been amended by adding the word ''areas'' immediately after the phrase ''both commercial forestry and forestry.''

dd. CSR 38–2–7.4.b.1.I.3. Subsection 7.4.b.1.I.3 has been amended in three places by adding the word ''areas.'' The first sentence has been amended by adding the word ''areas'' immediately after the phrase ''for commercial forestry and forestry.'' The second sentence has been amended by adding the word ''areas'' immediately after the words ''[f]or forestry.'' The third sentence has been amended by adding the word ''areas'' immediately after the phrase ''for commercial forestry.''

ee. CSR 38–2–7.4.b.1.I.4. This provision concerns a commercial forestry mitigation plan, and has been amended in the last sentence by adding the phrase ''and the site meets the standards of 9.3.h of this rule'' at the end of the sentence. In addition, the word ''and'' has been deleted in the last sentence immediately after the phrase ''follow the provisions of this rule'' and

that word has been replaced by a semicolon.

In its submittal of the amendment to this provision, the WVDEP stated that in an August 18, 2000, **Federal Register** notice (65 FR 50409, see pages 50423 and 50424), OSM stated that the requirement to pay twice the remaining bond is approved to the extent that payment of the civil penalty will not allow an other to receive final release. The WVDEP stated that the remainder of 7.4.1.I.4 was not approved.

ff. CSR 38–2–7.4.b.1.J. This provision concerns the front faces of valley fills and has been amended by deleting existing Subsections 7.4.b.1.J.1.(b) and (c) and re-designating existing Subsections 7.4.b.1.J.1.(d) and (e) as new Subsections 7.4.b.1.J.1.(b) and (c). As amended, Subsection 7.4.b.1.J. provides as follows:

7.4.b.1.J. Front Faces of Valley Fills.

7.4.b.1.J.1. Front faces of valley fills shall be exempt from the requirements of this rule except that:

7.4.b.1.J.1.(a). They shall be graded and compacted no more than is necessary to achieve stability and non-erodability;

7.4.b.1.J.1.(b). The groundcover mixes described in subparagraph 7.4.d.b.1.G. shall be used unless the Secretary requires a different mixture;

7.4.b.1.J.1.(c) Kentucky 31 fescue, serecia lespedeza, vetches, clovers (except ladino and white clover) or other invasive species may not be used; and

7.4.b.1.J.2. Although not required by this rule, native, non-invasive trees may be planted on the faces of fills.

In its submittal of this provision, the WVDEP stated that this provision was amended to remove language that contradicts other parts of CSR 38–2–7.4.

gg. CSR 38–2–7.5.a. Section CSR 38–2–7.5 concerns Homestead postmining land use. Subsection CSR 38–2–7.5.a has been amended by adding a new sentence to the end of the existing language. As amended, CSR 38–2–7.5.a provides as follows:

7.5.a. Operations receiving a variance from AOC for this use shall establish homesteading on at least one half (½) of the permit area. The remainder of the permit area shall support an alternate AOC variance use. The acreage considered homesteading shall be the sum of the acreage associated with the following: the civic parcel; the commercial parcel; the conservation easement; the homestead parcel; the rural parcel and any required infrastructure.

We note that this revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (rrrrr). The requirement at 30 CFR 948.16 (rrrrr) provides for the amendment of: (1) CSR 38–2–7.5.a to clarify whether or not the calculated acreage of the Commercial Parcel(s) is to be summed with the total Homestead acreage for the purpose of calculating the acreage of other various components of the Homestead Area (such as Common Lands, Village Parcels, Conservation Easement, etc.); and (2) CSR 38–2–7.5.l.4 to clarify whether or not the acreage for Public Nursery is to be calculated based on the amount of acreage available for the Village Homestead, the Civil Parcel, or the entire Homestead Area (see Item 2(mm) below).

hh. CSR 38–2–7.5.b.3. This provision concerns the definition of ''Commercial parcel,'' and has been amended by deleting the word ''regulation'' in the last sentence and replacing that word with the word ''rule.'' In addition, a new sentence has been added to the end of the provision. As amended, Subsection 7.5.b.3 provides as follows:

7.5.b.3. Commercial parcel means a parcel retained by the landowner of record and incorporated within the homestead area on which the landowner or its designee may develop commercial uses. The size and location of commercial parcels shall comply with the requirements of this rule. Provided, however, parcels retained by the landowner for commercial development and incorporated within the Homestead area must be developed for commercial uses as provided by subdivision 7.5.g.5 of this rule.

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(fffff). The requirement at 30 CFR 948.16(fffff) provides that CSR 38–2–7.5.b.3 be amended, or the West Virginia program otherwise be amended, to clarify that parcels retained by the landowner for commercial development and incorporated within the Homestead area must be developed for commercial uses as provided by Subsection CSR 38–2–7.5.g.5.

ii. CSR 38–2–7.5.i.10. This provision concerns wetlands associated with Homestead areas, and is amended by adding a new sentence immediately following the existing first sentence. As amended, Subsection 7.5.i.10 provides as follows:

7.5.i.10. Wetlands. Each homestead plan may describe areas within the homestead area reserved for created wetlands. The created wetlands shall comply with the requirements of 3.5 of this rule. These created wetlands may be ponds, permanent impoundments or wetlands created during mining. They may be left in place after final bond release. Any pond or impoundment left in place is subject to requirements under subsection 5.5 of this rule.

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(iiiii). The requirement at 30 CFR 948.16(iiiii) provides that CSR 38–2–7.5.i.10 be amended, or the West Virginia program otherwise be amended, to require compliance with the permit requirements at CSR 38–2–3.5.d.

jj. CSR 38–2–7.5.j.3.A. This provision concerns the definition of soil in relation to Homestead areas, and is amended in the first sentence by adding the soil horizon ''E'' between soil horizons ''A'' and ''B.''

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16(jjjjj). The requirement at 30 CFR 948.16(jjjjj) provides that CSR 38–2–7.5.j.3.A be amended by adding an ''E'' horizon.

kk. CSR 38–2–7.5.j.3.B. This provision concerns the recovery and use of soil on Homestead areas, and is amended by deleting the exception that is stated in the first sentence. As amended, Subsection 7.5.j.3.B provides as follows:

7.5.j.3.B. The Secretary shall require the operator to recover and use all the soil on the mined area, as shown on the soil maps. The Secretary shall assure that all saved soil includes all of the material from the O and A horizons.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (kkkkk). The requirement at 30 CFR 948.16 (kkkkk) provides that CSR 38–2–7.5.j.3.B be amended by deleting the phrase, ''except for those areas with a slope of at least 50%,'' and by deleting the phrase, ''and other areas from which the applicant affirmatively demonstrates and the Director of the WVDEP finds that soil cannot reasonably be recovered.''

ll. CSR 38–2–7.5.j.3.E. This provision concerns soil substitutes and is amended by adding the phrase ''and is in accordance with 14.3.c of this rule'' at the end of the first sentence.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (lllll). The requirement at 30 CFR 948.16 (lllll) provides that CSR 38–2–7.5.j.3.E be amended, or the West Virginia program otherwise be amended, to provide that soil substitute material must be equally suitable for sustaining

vegetation as the existing topsoil and the resulting medium is the best available in the permit area to support vegetation.

mm. CSR 38–2–7.5.l.4.A. This provision concerns public nursery associated with Homestead areas, and is amended by adding the word ''village'' between the words ''homestead'' and ''area'' in the first sentence.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (rrrrr). The requirement at 30 CFR 948.16 (rrrrr) provides for the amendment of: (1) CSR 38–2–7.5.a to clarify whether or not the calculated acreage of the Commercial Parcel(s) is to be summed with the total Homestead acreage for the purpose of calculating the acreage of other various components of the Homestead Area (such as Common Lands, Village Parcels, Conservation Easement, etc.); and (2) CSR 38–2–7.5.l.4 to clarify whether or not the acreage for the Public Nursery is to be calculated based on the amount of acreage available for the Village Homestead, the Civil Parcel, or the entire Homestead Area.

nn. CSR 38–2–7.5.o.2. This provision concerns Phase II bond release of surface mining operations with a Homestead postmining land use, and is amended by adding a proviso at the end of the existing provision. As amended, CSR 38–2–7.5.o.2 provides as follows:

7.5.o.2. Phase II bond release may not occur before two years have passed since Phase I bond release. Before approving Phase II bond release, the Secretary shall assure that the vegetative cover is still in place. The Secretary shall further assure that the tree survival on the conservation easements and public nurseries are no less than 300 trees per acre (80% of which must be species from the approved list). Furthermore, in the conservation easement and public nursery areas, there shall be a 70% ground cover where ground cover includes tree canopy, shrub and herbaceous cover, and organic litter. Trees and shrubs counted in considering success shall be healthy and shall have been in place at least two years, and no evidence of inappropriate dieback. Phase II bond release shall not occur until the service drops for the utilities and communications have been installed to each homestead parcel. Provided, however, the applicable revegetation success standards for each phase of bond release on Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels and Common Lands shall be its corresponding revegetation success standards specified in 9.3 of this rule.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (ppppp). The requirement at 30 CFR 948.16 (ppppp) provides that CSR 38–2–7.5.o.2 be amended, or the West Virginia program otherwise be amended, to identify the applicable revegetation success standards for each phase of bond release on Commercial Parcels, Village Parcels, Rural Parcels, Civic Parcels and Common Lands.

oo. CSR 38–2–9.3.d. Subsection 9.3 concerns the standards for evaluating vegetative cover. Subsection 9.3.d is amended by deleting the word ''determine'' in the first sentence, and adding in its place the word ''verify.'' The existing second sentence concerning a statistically valid sampling technique is deleted, and is replaced by a new sentence that requires the operator to provide the Secretary of the WVDEP with a statistically valid sampling technique. As amended, Subsection 9.3.d provides as follows:

9.3.d. Not less than two (2) years following the last date of augmented seeding, the Secretary shall conduct a vegetative inspection to verify that applicable standards for vegetative success have been met. The operator shall provide to the Secretary a vegetative evaluation using a statistically valid sampling technique with a ninety (90) percent statistical confidence interval. An inspection report shall be filed for each inspection and when the standard is met, the Secretary shall execute a Phase II bond release.

pp. CSR 38–2–9.3.e. Subsection 9.3.e concerns request of final bond release, and is amended by adding the phrase ''which includes a final vegetative evaluation using approved, statistically valid sampling techniques'' to the end of the first sentence. In addition, the words ''inspection to verify the'' are added to the second sentence, immediately following the phrase ''the Secretary shall conduct.'' Finally, the words ''using approved, statistically valid sampling techniques'' are deleted from the end of the second sentence. As amended, Subsection 9.3.e provides as follows:

9.3.e. After five (5) growing seasons following the last augmented seeding, planting, fertilization, revegetation, or other work, the operator may request a final inspection and final bond release which includes a final vegetative evaluation using approved, statistically valid sampling techniques. Upon receipt of such request, the Secretary shall conduct an inspection to verify the final vegetative evaluation. A final report shall be filed and if the applicable standards have been met, the Secretary shall release the remainder of the bond. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 (ninety) percent of the success standard.

In its submittal of the amendment of this provision, the WVDEP stated that the amendment is to make it clear that the operator will provide the information to determine if the vegetation success standard has been met.

qq. CSR 38–2–14.5.h. Subsection CSR 38–2–14.5 concerns performance standards for hydrologic balance. Subsection 14.5.h is amended by adding two new sentences at the end of this provision relating to the waiver of water supply replacement. As amended, Subsection 14.5.h provides as follows:

14.5.h. A waiver of water supply replacement granted by a landowner as provided in subsection (b) of section 24 of the Act [WVSMCRA] shall apply only to underground mining operations, provided that a waiver shall not exempt any operator from the responsibility of maintaining water quality. Provided, however, the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

In its submittal of this revision, the WVDEP stated that the revision is intended to comply with the required program amendment codified in the Federal regulations at 30 CFR 948.16 (sss). The requirement at 30 CFR 948.16 (sss) provides that CSR 38–2–14.5.h be amended, or the West Virginia program otherwise be amended, to require that, if the water supply is not needed for the existing or postmining land use, such waiver can only be approved where it is demonstrated that a suitable alternative water source is available and could feasibly be developed.

rr. CSR 38–2–14.15.c.3. Subsection CSR 38–2–14.15 concerns performance standards for contemporaneous reclamation. Subsection 14.15.c.3 is amended by deleting the reference to the ''National Environmental Policy Act'' and adding in its place a reference to the ''Endangered Species Act.''

In its submittal of the amendment to this provision, the WVDEP stated that the amendment is to correct a wrong cross-reference.

ss. CSR 38–2–20.6.d. Section CSR 38–2–20 concerns Inspection and Enforcement. Subsection CSR 38–2–

20.6.d concerns Notice of Informal Assessment Conference, and is amended by deleting the second sentence of this provision. The deleted sentence provided as follows: ''[p]rovided, however, the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account.

tt. CSR 38–2–20.6.j. Subsection CSR 38–2–20.6.j concerns Escrow, and is amended by deleting the words ''an informal conference or'' and adding in their place the word ''a.'' As amended, CSR 38–2–20.6.j provides as follows: ''Escrow. If a person requests a judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review.''

In its submittal of this amendment, the WVDEP stated that the requirement to pre-pay penalty prior to informal conference did not achieve the desired results. WVDEP also stated that it has led to confusion between agency and industry alike and, therefore, the agency is deleting this requirement.

Amendments to CSR 199–1

a. CSR 199–1–2.36a. Section CSR 199–1–2 concerns Definitions. New Subsection 2.36a has been added to define the term ''Community or Institutional Building.'' New Subsection 2.36a provides as follows:

2.36a. Community or Institutional Building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment further defines the definition, and the information was taken from CSR 38–2.

b. CSR 199–1–2.36b. New Subsection 2.36b has been added to define the term ''Public Building.'' New Subsection 2.36b provides as follows:

2.36b. Public Building means any structure that is owned or leased by a public agency or used primarily for public business or meetings.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment further defines the definition, and the information was taken from CSR 38–2.

c. CSR 199–1–2.37. New Subsection 2.37 has been added to define the term ''Structure.'' Existing Subsections 2.37, 2.38, and 2.39 have been renumbered as Subsections 2.38, 2.39, and 2.40. New Subsection 2.37 provides as follows:

2.37 Structure means any man-made structures within or outside the permit areas which include, but is not limited to: Dwellings, outbuildings, commercial buildings, public buildings, community buildings, institutional buildings, gas lines, water lines, towers, airports, underground mines, tunnels and dams. The term does not include structures built and/or utilized for the purpose of carrying out the surface mining operation.

In its submittal of the amendment to this provision, the WVDEP stated that the definition was taken from CSR 38–2.

d. CSR 199–1–3.3.b. Subsection CSR 199–1–3.3 concerns public notice of blasting operations, and has been amended by adding new Subsection 3.3.b to provide as follows:

3.3.b. Blasting Signs. The following signs and markers shall be erected and maintained while blasting is being conducted:

3.3.b.1 Warning signs shall be conspicuously displayed at all approaches to the blasting site, along haulageways and access roads to the mining operation and at all entrances to the permit area. The sign shall at a minimum be two feet by three feet (2' x 3') reading ''WARNING! Explosives in Use'' and explaining the blasting warning and the all clear signals and the marking of blasting areas and charged holes; and

3.3.b.2 Where blasting operations will be conducted within one hundred (100) feet of the outside right-of-way of a public road, signs reading ''Blasting Area'', shall be conspicuously placed along the perimeter of the blasting area.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment adds information from CSR 38–2 relating to blasting signs.

e. CSR 199–1–3.7. Subsection CSR 199–1–3.7 concerns blasting control for other structures, and has been amended by deleting the words ''in subsection 2.35 of this rule'' in the first sentence.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment eliminates an incorrect reference.

f. CSR 199–1–4.8. Subsection CSR 199–1–4.8 concerns violations by a certified blaster, and has been amended by deleting the words ''director shall'' and replacing those words with the words ''Secretary may.'' In addition, the words ''written notification'' are added immediately after the word ''issue.'' The phrase ''or revoke the certification of'' is added immediately after the phrase ''a temporary suspension order'', and the word ''against'' has been deleted. As amended, the paragraph at Subsection CSR 199–1–4.8 provides as follows:

4.8. Violations by a Certified Blaster. —The Secretary may issue written notification, a temporary suspension order, or revoke the certification of a certified blaster who is, based on clear and convincing evidence, in violation of any of the following:

g. CSR 199–1–4.8.c. This Subsection has been amended by deleting the words ''[s]ubstantial or significant'' at the beginning of the first sentence, and by capitalizing the word ''federal'' in the first sentence.

h. CSR 199–1–4.8.f and 4.8.g. These Subsections are added and provide as follows:

4.8.f. A pattern of conduct which is not consistent with acceptance of responsibility for blasting operations, *i.e.*, repeated violations of State or Federal laws pertaining to explosives; or

4.8.g. Willful Conduct—The Secretary shall suspend or revoke the certification of a blaster for willful violations of State or Federal laws pertaining to explosive.

In its submittal of the amendment to this provision, the WVDEP stated that the amendment was made because the wording was not consistent with previously approved rule 22–4–6.01, according to OSM. In addition, the WVDEP stated that this subsection has been reorganized and renumbered for clarity reasons, as required by the Council of Joint Rulemaking.

i. CSR 199–1–4.9. This subsection concerns penalties, and has been amended, reorganized and renumbered. A new title, ''Suspension and Revocation'' has been added at Subsection 4.9.a. Existing Subsection 4.9.a. has been renumbered as 4.9.a.1 and 4.9.a.2. Existing Subsection 4.9.b has been renumbered as 4.9.a.3. New Subsection 4.9.a.4 has been added. Existing Subsections 4.9.c and 4.9.d have been renumbered as 4.10 and 4.11, respectively. Finally, existing Subsections 4.10, 4.11, and 4.12 have been renumbered as Subsections 4.12, 4.13, and 4.14, respectively. As amended, Subsections 4.9, and 4.10 through 4.14 provide as follows:

4.9. Penalties.

4.9.a Suspension and Revocation.

4.9.a.1. Suspension.—Upon service of a temporary suspension order, the certified blaster shall be granted a hearing before the Secretary to show cause why his or her certification should not be suspended or revoked.

4.9.a.2. The period of suspension will be conditioned on the severity of the violation committed by the certified blaster and, if the violation can be abated, the time period in which the violation is abated. The Secretary may require remedial actions and measures and re-training and re-examination as a condition for re-instatement of certification.

4.9.a.3. Revocation.—If the remedial action required to abate a suspension order, issued

by the Secretary to a certified blaster, or any other action required at a hearing on the suspension of a blaster's certification, is not taken within the specified time period for abatement, the Secretary may revoke the blaster's certification and require the blaster to relinquish his or her certification card. Revocation will occur if the certified blaster fails to re-train or fails to take and pass reexamination as a requirement for remedial action.

4.9.a.4. In addition to suspending or revoking the certification of a blaster, failure to comply with the requirements of this subsection may also result in further suspension or revocation of a blaster's certification.

4.10. Reinstatement.—Subject to the discretion of the Secretary, and based on a petition for reinstatement, any person whose blaster certification has been revoked, may, if the Secretary is satisfied that the petitioner will comply with all blasting law and rules, apply to re-take the blasters certification examination, provided the person meets all of the requirements for blasters certification specified by this subsection, and has completed all requirements of the suspension and revocation orders, including the time period of the suspension.

4.11. Civil and Criminal Penalties.—Every certified blaster is subject to the individual civil and criminal penalties provided for in W. Va. Code § 22–3–17.

4.12. Hearings and Appeals.—Any certified blaster who is served a suspension order, revocation order, or civil and criminal sanctions is entitled to the rights of hearings and appeals as provided for in W. Va. Code §§ 22–3–16 and 17.

4.13. Blasting Crew.—Persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from a certified blaster.

4.14. Reciprocity With Other States.—The Secretary may enter into a reciprocal agreement with other states wherein persons holding a valid certification in that state may apply for certification in West Virginia, and upon approval by the Secretary, be certified without undergoing the training or examination requirements set forth in this rule.

In its submittal of the amendments to this provision, the WVDEP stated that the amendments provide clarification and remove incorrect reference. In addition, the WVDEP stated that Subsection 4.9 has been reorganized and renumbered for clarity reasons, as required by the Council of Joint Rulemaking. We also note, that the amendments to Subsection 4.9 are intended to address the required program amendment codified in the Federal regulations at 30 CFR 948.16(a). The Federal regulations at 30 CFR 948.16(a) provide that West Virginia must amend CSR 199–1–4.9.a and 4.9.b, or otherwise amend the West Virginia program, to provide that upon finding of willful conduct, the Secretary of the WVDEP shall revoke or suspend a blaster's certification.

3. Committee Substitute for House Bill 3033

WV Code 22–3–11 has been amended by adding new Subsection 22–3–11(h)(2) to provide as follows:

(2) In managing the Special Reclamation Program, the Secretary shall:

(A) Pursue cost effective alternative water treatment strategies; and

(B) Conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund.

4. House Bill 3236

This Bill amended the W. Va. Code by adding new Section 22–3–11a and new Section 22–3–32a to provide as follows:

22–3–11a. Special reclamation tax; clarification of imposition of tax; procedures for collection and administration of tax; application of Tax Procedure and Administration Act and Tax Crimes and Penalties Act.

(a) It is the intent of the Legislature to clarify that from the date of its enactment, the special reclamation tax imposed pursuant to the provisions of section eleven of this article is intended to be in addition to any other taxes imposed on persons conducting coal surface mining operations including, but not limited to the tax imposed by section thirty-two of this article, the tax imposed by article twelve-b, chapter eleven of this code, the taxes imposed by article thirteen-a of said chapter and the tax imposed by article thirteen-v of said chapter.

(b) Notwithstanding any other provisions of section eleven of this article to the contrary, under no circumstance shall an exemption from the taxes imposed by article twelve-b, thirteen-a or thirteen-v, chapter eleven of this code be construed to be an exemption from the tax imposed by section eleven of this article.

(c) When coal included in the measure of the tax imposed by section eleven of this article is exempt from the tax imposed by article twelve-b, chapter eleven of this code, the tax imposed by section eleven of this article shall be paid to the tax commissioner in accordance with the provisions of sections four through fourteen, inclusive, article twelve-b, chapter eleven of this code, which provisions are hereby incorporated by reference in this article.

(d) General procedure and administration.—Each and every provision of the ''West Virginia Tax Procedure and Administration Act'' set forth in article ten, chapter eleven of the code applies to the special tax imposed by section eleven of this article with like effect as if such act were applicable only to the special tax imposed by said section eleven and were set forth *in extenso* in this article, notwithstanding the provisions of section three of said article ten.

(e) Tax crimes and penalties.—Each and every provision of the ''West Virginia Tax Crimes and Penalties Act'' set forth in article nine of said chapter eleven applies to the special tax imposed by section eleven of this article with like effect as if such act were applicable only to the special tax imposed by said section eleven and set forth *in extenso* in this article, notwithstanding the provisions of section two of said article nine.

22–3–32a. Special tax on coal; clarification of imposition of tax; procedures for collection and administration of tax.

(a) It is the intent of the Legislature to clarify that from the date of its enactment, the special tax on coal imposed pursuant to the provisions of section thirty-two of this article is intended to be in addition to any other taxes imposed on every person in this state engaging in the privilege of severing, extracting, reducing to possession or producing coal for sale profit or commercial use including, but not limited to the tax imposed by section eleven of this article, the tax imposed by article twelve-b, chapter eleven of this code, the taxes imposed by article thirteen-a of said chapter and the tax imposed by article thirteen-v of said chapter.

(b) Notwithstanding any other provisions of section thirty-two of this article to the contrary, under no circumstance shall an exemption from the taxes imposed by article twelve-b, thirteen-a or thirteen-v, chapter eleven of this code be construed to be an exemption from the tax imposed by section thirty-two of this article.

(c) When coal included in the measure of the tax imposed by section thirty-two of this article is exempt from the tax imposed by article twelve-b, chapter eleven of this code, the tax imposed by section thirty-two of this article shall be paid to the tax commissioner in accordance with the provisions of sections four through fourteen, inclusive, article twelve-b, chapter eleven of this code, which provisions are hereby incorporated by reference in this article.

5. CSR 38–2–14.14.g.2.A.6 Removal of Erosion Protection Zone (EPZ)

This amendment consists of information provided by the WVDEP, including a draft memorandum, to support its assertion that OSM should reverse its previous disapproval of language concerning EPZ at CSR 38–2–14.14.g.2.A.6. In its submittal concerning this provision, the WVDEP stated that in a letter to OSM dated March 8, 2005 (actually, the letter's date was March 9, 2005, Administrative Record Number WV–1418), the State had explained its position on EPZ and the circumstances when the EPZ could be left in place as a permanent structure. The WVDEP's March 9, 2005, letter was in response to OSM's disapproval of language concerning EPZ at CSR 38–2–14.14.g.2.A.6 that was part of a proposed amendment submitted to OSM by letter dated March 18, 2003 (Administrative Record Number WV–1352). The language was not approved, WVDEP stated, based on the lack of U.S. Environmental Protection Agency (EPA) concurrence with the State's proposed language. Background information on OSM's previous disapproval of language

concerning EPZ at CSR 38–2–14.14.g.2.A.6 is presented below.

Under the Federal regulations at 30 CFR 732.17(h)(11)(ii), OSM is required to obtain written concurrence from EPA for proposed provisions of a State program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On April 1, 2003, we asked EPA for concurrence and comments on the proposed amendments that were submitted to OSM by letter dated March 18, 2003 (Administrative Record Number WV–1355).

The EPA responded by letter dated June 13, 2003, (Administrative Record Number WV–1363). The EPA stated that it reviewed the proposed revisions and has concerns about the requirement of EPZ associated with single-lift valley fills at CSR 38–2–14.14.g.1 (Durable Rock Fills).

OSM published its decision on a proposed West Virginia program amendment that addressed, in part, the addition of new language concerning EPZ related to durable rock fills on July 7, 2003 (see 68 FR 40157, finding 19, pages 40161 and 40162). In that finding, OSM did not approve language at CSR 38–2–14.14.g.2.A.6 that would have allowed the permanent retention of EPZ if approval were granted in the reclamation plan. In particular, OSM did not approve the words ''Unless otherwise approved in the reclamation plan'' because approval would have been inconsistent with EPA's conditional concurrence to remove fill material associated with EPZs from streams and to reconstruct the stream channels after mining.

EPZ Purpose—The EPA stated that it understands that an EPZ is a buffer zone between the toe of a single lift valley fill and its downstream sedimentation pond. It consists of a wide and low fill, revegetated to dissipate runoff energy from the valley fill face and prevent pond overloading during severe storm periods. The EPA stated that a single lift fill is particularly subject to erosion, since it is constructed in a downstream direction toward the pond with no reclamation or revegetation of the fill face until completion of mining.

EPA's Concern—The EPA stated that it is concerned that EPZs may result in permanent stream fills after completion of mining. According to CSR 38–2–14.14.g.2.A.1, the EPA stated, a 250-foot long EPZ would be required for a 500-foot high valley fill, which, EPA stated, is not unusual in southern West Virginia. Although Section 14.14.g.2.A.6 requires EPZ removal, regrading, and revegetating after mining, EPA stated, it does not appear to include the removal of the stream fill associated with the EPZ or reconstruction of the stream channel. An alternative valley fill design, which appears more environmentally acceptable, EPA stated, is also indicated in Section 14.14.g.1 and further described in Section 14.14.g.3. The EPA stated that this involves starting valley fill construction from the toe and proceeding upstream in multiple lifts (layers) of 100 feet or less in thickness. The EPA stated that the face of each lift would be reclaimed and revegetated before starting the next lift. The toe of the first lift would be at the sedimentation pond, the EPA stated, and an EPZ would not be necessary due to better erosion control features.

Conditional Concurrence—The EPA stated that it concurred with the proposed revisions submitted by the State on March 18, 2003, under the condition that a requirement be included to remove stream fills associated with EPZs after mining and reconstruct the stream channels. The EPA stated that it should also be noted that stream filling during EPZ construction requires authorization under Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers. Considering the high erosion potential of single-lift valley fills, the EPA stated, they (EPA) recommend that the single lift method be replaced by the more environmentally favorable approach of starting at the toe and proceeding upwards in multiple lifts. The EPA stated that it will likely make this recommendation for any proposed single lift fill coming before it for Section 404 review.

In response to EPA's conditional concurrence, OSM did not approve the words ''Unless otherwise approved in the reclamation plan'' at CSR 38–2–14.14.g.2.A.6 because leaving an EPZ in place would be inconsistent with EPA's conditional concurrence to remove stream fills associated with EPZs and to reconstruct the stream channels after mining (see Finding 19, pages 40161 and 40162). In addition, OSM approved CSR 38–2–14.14.g.2.A.6 only to the extent that following mining, all stream fills associated with EPZs will be removed and the stream channels shall be reconstructed.

In its June 13, 2005, submittal letter, the WVDEP requests that OSM reconsider its decision to disapprove certain language at CSR 38–2–14.14.g.2.A.6 (Administrative Record Number WV–1421). In support of its request, the WVDEP stated that following the submittal of its March 9, 2005, letter discussion ensued among representatives of WVDEP, EPA, and OSM. The WVDEP stated that EPA expressed concern that the EPZ rule did not reference Section 404 of the Clean Water Act and that it wasn't clear that the operator had to demonstrate leaving the EPZ would provide benefits to or protection to the environment and/or the public. The WVDEP stated that it reiterated that the present wording of the State rule requires removal and/or reclamation of EPZ areas and restoration of the stream, unless otherwise approved by the reclamation plan. The WVDEP further stated that the circumstances under which such areas could become permanent would be at the discretion of WVDEP, with a demonstration by the applicant to the satisfaction of the Secretary of the WVDEP that the environment/public benefits outweigh any anticipated impacts.

The WVDEP also stated that in addition to the mining requirements imposed by WVDEP, such construction is subject to provisions of Section 404 of the Clean Water Act and under the ultimate jurisdiction of the U.S. Army Corps of Engineers and EPA. The WVDEP also submitted a draft memorandum to its staff for OSM's consideration in support of its request that OSM reconsider its previous decision on the EPZ provision at CSR 38–2–14.14.g.2.A.6. The draft memorandum submitted by the WVDEP is quoted below.

Interoffice Memorandum

To: All DMR Employees
From: Randy Huffman, Director
Date:
Subject: Durable rock fills with erosion protection zone

38–2–14.14.g.2.A.6 requires removal and reclamation of erosion protection zone, and restoration of the stream and does provide that erosion protection zone may become permanent structure approved in the reclamation plan. It states:

''Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be reg[ra]ded and revegetated in accordance with the reclamation plan.''

For an erosion protection zone to become a permanent structure, the applicant must provide a demonstration to the satisfaction of the Secretary that leaving the erosion protection zone provides benefits to or protection to the environment and/or public. Such benefits or protection include, but are not limited to; runoff attenuation, wildlife and wetland enhancement, and stream scour protection. This approval will be contingent upon the applicant obtaining all other necessary permits and/or approvals.

6. State Water Rights and Replacement Policy

WVDEP submitted a policy dated August 1995 regarding water rights and replacement (Administrative Record Number WV–1425). As noted in the policy, its purpose is to define the time periods for providing temporary and permanent water replacement. This policy is to supplement the proposed regulatory revisions that the State made at CSR 38–2–14.5(h). The policy is in response to an OSM Part 732 notification dated June 7, 1996, regarding subsidence and water replacement (Administrative Record Number WV–1037(a)). The Federal regulations at 30 CFR 817.41(j) require prompt replacement of a residential water supply that is contaminated, diminished, or interrupted by underground mining activities conducted after October 24, 1992. OSM advised WVDEP that its program lacked guidance concerning timing of water supply replacement. A proposed statutory revision that was intended to address this issue failed to pass the Legislature. The policy is intended to satisfy the Federal requirement by setting forth the time periods within the State program for providing temporary and permanent water replacement. The policy provides as follows:

WV Division of Environmental Protection, Office of Mining and Reclamation, Inspection and Enforcement.

Series: 14, Pg. No: 1 of 1, Revised: 8–95.

SUBJECT: Water Rights and Replacement

1. Purpose: Define time periods as they relate to water rights and replacement.

2. Definitions:

3. Legal Authority: 22–3–24

4. Policy/Procedures: Upon receipt of notification that a water supply was adversely affected by mining, the permittee shall provide drinking water to the user within twenty-four (24) hours.

Within seventy two (72) hours, the permittee shall have the user hooked up to a temporary water supply. The temporary supply shall be hooked up to existing plumbing, if any, to allow the user to conduct all normal activities associated with domestic water use. This includes drinking, cooking, bathing, washing, non commercial farming, and gardening.

Within thirty (30) days of notification, the permittee shall begin activities to establish a permanent water supply or submit a proposal to the WVDEP outlining the measures and timetables to be utilized in establishing a permanent supply. The total elapsed time from notification to permanent supply hook-up cannot exceed two (2) years.

The permittee is responsible for payment of operation and maintenance costs on a replacement water supply in excess of reasonable and customary delivery costs that the user incurred.

Upon agreement by the permittee and the user (owner), the obligation to pay such operation and maintenance costs may be satisfied by a one-time lump sum amount agreed to by the permittee and the water supply user (owner).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS NO. WV–106-FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on September 12, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and

promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State Governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 29, 2005

Brent Wahlquist,

Regional Director, Appalachian Region.

[FR Doc. 05–17002 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF EDUCATION

34 CFR Part 226

State Charter School Facilities Incentive Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues these proposed regulations to administer the State Charter School Facilities Incentive program. Under this program, the Department of Education (''Department'') provides competitive grants to States to help charter schools meet their need for facilities.

DATES: We must receive your comments on or before September 26, 2005.

ADDRESSES: Address all comments about these proposed regulations to Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202–6140. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *http://www.regulations.gov*; or you may send your Internet comments to us at the following address: *comments@ed.gov.*

You must include the term ''state incentive'' in the subject line of your electronic message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6140. Telephone: (202) 205–9765 or via Internet: *charter.facilities@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:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 4W259, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

These proposed regulations would apply to the State Charter School Facilities Incentive program, which is authorized under title V, part B, subpart 1 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110, enacted January 8, 2002) (Act). The purpose of this program is to assist charter schools in meeting their facilities needs. Under this program, funds are provided on a competitive basis to States to create new or enhance existing per-pupil facilities aid programs on behalf of charter schools.

In this notice, we are proposing to establish selection criteria and funding priorities for this program's discretionary grant competitions after fiscal year (FY) 2004. The proposed criteria are designed to award grants to States that are assisting charter schools with meeting their facility needs, but still have an unmet need. The proposed criteria also would be used to assess the quality of the applicant's plan, the proposed grant project team, and the proposed budget. These criteria would appear in § 226.12 and are similar to the criteria that the Department used to award grants under this program in FY 2004.

Section 226.14 of the proposed regulations would include two competitive preference priorities. The proposed priority in § 226.14(a) is designed to meet the need for facilities in areas with the greatest need for public school choice. In some cases, there are an insufficient number of classroom seats to provide public school choice. Under the proposed priority in § 226.14(b), we would award additional points to States that have not previously received a grant under the program.

Section 226.21 of the proposed regulations would clarify that construction and the purchase of real property are allowable expenditures under this program. Under 34 CFR 75.533, these expenditures are prohibited unless either the program statute or the implementing regulations explicitly authorize them. Because expenditures for construction and the purchase of real property are critical to implementing successful school facility programs, we are proposing that they be authorized in the implementing regulations. Proposed § 226.21 also lists other allowable uses of grant funds under this program.

Proposed § 226.22 indicates the types of expenditures that would fall under the five percent cap on administrative expenses. This proposed regulation is based on a statutory cap of five percent that applies to evaluation, technical assistance, and dissemination. Proposed § 226.22 is designed to maximize the amount of funds available for charter schools while still providing States with sufficient funds to adequately administer the program.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Secretary believes that these regulations are necessary to clarify complex statutory provisions. As noted elsewhere in this notice, these proposed regulations add clarity where the statute is ambiguous or reorganize statutory material to facilitate a better understanding of the statute's requirements. Nearly all of the benefits and costs of these proposed regulations stem from the underlying statute and not the regulations. The costs associated with these proposed regulations are not only minimal but are also justified in terms of the benefits that applicants for these discretionary grants will receive. The statute requires an application, but the types of information that would be collected through the proposed selection criteria should be readily available to applicants under this program and would impose minimal burden on applicants.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

• Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

• Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 226.1 *What is the State Charter School Facilities Incentive program*?)

• Could the description of the proposed regulations in the ''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be tangentially affected by these proposed regulations are small grantees and, tangentially, small charter schools that ultimately benefit from services provided by grantees. In addition, we do not believe that the regulations would have a significant economic impact on the limited number of small charter schools affected because the proposed regulations would not impose excessive regulatory burdens on those entities or require unnecessary Federal supervision.

The proposed regulations would benefit both small and large entities in that they clarify confusing and complex statutory requirements. Also, because the statute requires State Charter School Facilities Incentive applicants to apply to the Department if they wish to receive discretionary funds, it would be difficult for the Department to award funds without the application information specified in the proposed regulations. The proposed regulations will ensure that applicants do not provide a significant amount of information that is already available to the Department.

The proposed regulations would impose minimal requirements for all applicants and minimal requirements with which grant recipients must comply. However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the State Charter School Facilities Incentive program.

Paperwork Reduction Act of 1995

Sections 226.12, 226.13, and 226.14 of these proposed regulations contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Collection of Information: State Charter School Facilities Incentive Grant program.

The Department will use the information collected through the selection criteria and competitive preference priorities to determine whether to fund applicants. Since the statute requires applicants to apply for funds, the Department would not be able to award these funds without the application to collect the required information.

We estimate the annual reporting and recordkeeping burden for this collection of information to average 40 hours for each respondent for 10 applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, we estimate the total annual reporting and recordkeeping burden for this collection to be 400 hours.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on this proposed collection of information in—

• Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

• Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

• Enhancing the quality, usefulness, and clarity of the information we collect; and

• Minimizing the burden on those who must respond. This includes exploring 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).

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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

You may also view this document in PDF at the following site: *http://www.ed.gov/programs/charterfacilities/index.html.*

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 84.354A State Charter School Facilities Incentive program.)

The Secretary of Education has delegated authority to the Assistant Deputy Secretary for Innovation and Improvement to issue these proposed amendments to 34 CFR Chapter II.

List of Subjects in 34 CFR Part 226

Charter Schools, Education, Educational facilities, Elementary and secondary education, Grant programs—education, Report and recordkeeping requirements, Schools.

Dated: August 23, 2005.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 226 to read as follows:

PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

Subpart A—General

Sec.
226.1 What is the State Charter School Facilities Incentive program?
226.2 Who is eligible to receive a grant?
226.3 What regulations apply to the State Charter School Facilities Incentive program?
226.4 What definitions apply to the State Charter School Facilities Incentive program?

Subpart B—How Does the Secretary Award a Grant?

226.11 How does the Secretary evaluate an application?
226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?
226.13 What statutory funding priority does the Secretary use in making a grant award?
226.14 What other funding priorities may the Secretary use in making a grant award?

Subpart C—What Conditions Must Be Met by a Grantee?

226.21 How may charter schools use these funds?
226.22 May grantees use grant funds for administrative costs?
226.23 May charter schools use grant funds for administrative costs?

Authority: 20 U.S.C. 1221e–3; 7221d(b), unless otherwise noted.

Subpart A—General

§ 226.1 What is the State Charter School Facilities Incentive program?

(a) The State Charter School Facilities Incentive program provides grants to States to help charter schools pay for facilities.

(b) Grantees must use these grants to—

(1) Establish new per-pupil facilities aid programs for charter schools;

(2) Enhance existing per-pupil facilities aid programs for charter schools; or

(3) Administer programs described under paragraphs (b)(1) and (2) of this section.

(Authority: 20 U.S.C. 7221d(b))

§ 226.2 Who is eligible to receive a grant?

States are eligible to receive grants under this program.

(Authority: 20 U.S.C. 7221(b))

§ 226.3 What regulations apply to the State Charter School Facilities Incentive program?

The following regulations apply to the State Charter School Facilities Incentive program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement)).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 226.

(Authority: 20 U.S.C. 1221e–3; 7221d(b))

§ 226.4 What definitions apply to the State Charter School Facilities Incentive program?

(a) *Definitions in the statute.* The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended (ESEA):

Charter school

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Facilities
Grant
Grantee
Project
Public
Secretary

(c) *Other definition.* The following definition also applies to this part:

Construction means—

(1) Preparing drawings and specifications for school facilities projects;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities as described in 34 CFR 222.172(b);

(4) Erecting or building school facilities; and

(5) Inspections or supervision related to school facilities.

(Authority: 20 U.S.C. 7221d(b); 7221i(1))

Subpart B—How Does the Secretary Award a Grant?

§ 226.11 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 226.12 and the competitive preference priorities in § 226.13 and § 226.14.

(b) The Secretary informs applicants of the maximum possible score for each criterion and competitive preference priority in the application package or in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7221d(b))

§ 226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

The selection criteria for this program are as follows:

(a) *Need for facility funding.* (1) The need for per-pupil charter school facility funding in the State.

(2) The extent to which the proposal meets the need to fund charter school facilities on a per-pupil basis.

(b) *Quality of plan.* (1) The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance

(State and Federal) declining over a five-year period.

(2) The flexibility charter schools have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying charter schools and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(c) *The grant project team.* (1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget.* (1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 5205(b)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *State experience.* The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid, access to State loan or bonding pools, and the use of Qualified Zone Academy Bonds.

(Authority: 20 U.S.C. 7221d(b))

§ 226.13 What statutory funding priority does the Secretary use in making a grant award?

The Secretary shall award additional points under a competitive preference priority regarding:

(a) *Periodic Review and Evaluation.* The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the student academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) *Number of High-Quality Charter Schools.* The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which the State applies for a grant under this competition.

(c) *One Authorized Public Chartering Agency Other than an LEA, or an Appeals Process.* The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency (LEA), such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(2) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) *High Degree of Autonomy.* The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

(Authority: 20 U.S.C. 7221b; 7221d(b))

§ 226.14 What other funding priorities may the Secretary use in making a grant award?

(a) The Secretary may award points to an application under a competitive preference priority regarding the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under title I of the ESEA;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of low-income students.

(b) The Secretary may award points to an application under a competitive preference priority for applicants that have not previously received a grant under the program.

(c) The Secretary may elect to consider the points awarded under these priorities only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 226.12 of this part.

(Authority: 20 U.S.C. 7221d(b))

Subpart C—What Conditions Must Be Met by a Grantee?

§ 226.21 How may charter schools use these funds?

(a) Charter schools that receive grant funds through their State must use the funds for facilities. Except as provided in paragraph (b) of this section, allowable expenditures include:

(1) Rent.

(2) Purchase of building or land.

(3) Construction.

(4) Renovation of an existing school facility.

(5) Leasehold improvements.

(6) Debt service on a school facility.

(b) Charter schools may not use these grant funds for purchasing land when they have no immediate plans to construct a building on that land.

(Authority: 20 U.S.C. 7221d(b))

§ 226.22 May grantees use grant funds for administrative costs?

State grantees may use up to five percent of their grant award for administrative expenses that include: indirect costs, evaluation, technical assistance, dissemination, personnel costs, and any other costs involved in administering the State's per-pupil facilities aid program.

(Authority: 20 U.S.C. 7221d(b))

§ 226.23 May charter schools use grant funds for administrative costs?

(a) Except as provided in paragraph (b) of this section, charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates, must comply with EDGAR and the Office of Management and Budget Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments).

(b) Consistent with the requirements in 34 CFR 75.564(c)(2), any charter school subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities.

(Authority: 20 U.S.C. 1221e-3; 7221d(b))

[FR Doc. 05–17049 Filed 8–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 228

RIN 0596–AC20

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[W0–610–411H12–24 1A]

RIN 1004–AD59

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

AGENCIES: U.S. Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Proposed rule; Notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) and the U.S. Forest Service (FS) are extending by 60 days the public comment period for the proposed rule published in the **Federal Register** on July 27, 2005 (70 FR 43349). The proposed rule would revise existing Onshore Oil and Gas Order Number 1 (see 48 FR 48916 as amended at 48 FR 56226 (1983)). The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except Osage Tribe) onshore oil and gas leases, including leases where the surface is managed by the FS. It also covers approvals necessary for subsequent well operations, including abandonment. In response to public requests for additional time and because the recently enacted Energy Policy Act of 2005 impacts certain provisions of the proposed rule, the BLM and the FS are extending the comment period 60 days from the original comment period closing date of August 26, 2005. The comment period is extended to October 25, 2005, to give the public additional time to comment.

DATES: Send your comments to the BLM on or before October 25, 2005. The BLM and the FS may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed below (see **ADDRESSES**).

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153. Hand Delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036. E-mail: *comments_washington@blm.gov.* Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: James Burd at (202) 452–5017 or Ian Senio at (202) 452–5049 at the BLM or Barry Burkhardt at (801) 625–5157 at the FS. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The BLM and the FS published the proposed rule on July 27, 2005 (70 FR 43349), and provided a 30 day comment period that will end on August 26, 2005. We are extending the comment period on the proposed rule until October 25, 2005. The comment period is being extended as a result of requests for extension from the public, but also because the recently enacted Energy Policy Act of 2005 (Act) impacts certain provisions of the proposed rule having to do with timing of the Application for Permit to Drill or Deepen package (APD) approvals. To make the proposed rule consistent with the provisions in that Act, the BLM intends to publish a further proposed rule in the **Federal Register** in the near future amending provisions associated with the timing of APD approvals.

Dated: August 22, 2005.

Dale N. Bosworth,

Chief, USDA—Forest Service.

Dated: August 19, 2005.

Rebecca W. Watson,

Assistant Secretary of the Interior.

[FR Doc. 05–17051 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 447 and 455

[CMS–2198–P]

RIN 0938–AN09

Medicaid Program; Disproportionate Share Hospital Payments

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 1001(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) which establishes new reporting and auditing requirements for State Disproportionate Share Hospital payments.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–2198–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2198–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 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 21244–8010.

(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 FURTHER INFORMATION CONTACT: Jim Frizzera, (410) 786–9535.

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–2198–P** and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs that provide medical assistance to low-income families, the elderly, and persons with disabilities. Section 1902(a)(13)(A)(iv) of the Act requires that States make Medicaid payment adjustments for hospitals that serve a disproportionate number of low-income patients with special needs. Section 1923(a)(2)(D) of the Act requires States to provide an annual report to the Secretary describing the payment adjustments made to each disproportionate share hospital (DSH).

Section 1923 of the Act also sets out certain limits on Federal financial participation for State DSH payments. Section 1923(f) of the Act defines, for each State, an aggregate annual limit on Federal financial participation for DSH payments. Section 1923(g)(1) of the Act also defines hospital-specific limits on Federal financial participation for DSH payments. Under the hospital-specific limits, a hospital's DSH payments must not exceed the costs incurred by that hospital in furnishing services during the year to Medicaid patients and the uninsured, less other Medicaid payments made to the hospital and payments made by uninsured patients (''uncompensated care costs'').

II. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003

Section 1001(d) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) added section 1923(j) to the Act to require States to report additional information about their DSH programs. Section 1923(j)(1) of the Act requires States to submit an annual report that includes the following:

- Identification of each DSH that received a DSH payment under the State's Medicaid program in the preceding fiscal year and the amount of DSH payments paid to that hospital in the same year.
- Such other information as the Secretary of Health and Human Services determines necessary to ensure the appropriateness of DSH payments.

Section 1923(j)(2) of the Act also requires States to have their DSH payment programs independently audited and to submit the independent certified audit annually to the Secretary. The certified independent audit must verify:

- The extent to which hospitals in the State have reduced uncompensated care costs to reflect the total amount of claimed expenditures made under section 1923 of the Act.
- DSH payments to each hospital comply with the applicable hospital-specific DSH payment limit.
- Only the uncompensated care costs of providing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and uninsured individuals as described in section 1923(g)(1)(A) of the Act are included in the calculation of the hospital-specific limits.
- The State included all Medicaid payments, including supplemental payments, in the calculation of such hospital-specific limits.
- The State has separately documented and retained a record of all its costs under the Medicaid program, claimed expenditures under the Medicaid program, uninsured costs in determining payment adjustments under section 1923 of the Act, and any payments made on behalf of the uninsured from payment adjustments under section 1923 of the Act.

Under section 1923(j) of the Act, Federal matching payments are contingent upon a State's submission of the annual DSH report and independent certified audit.

III. Provisions of the Proposed Regulations

A. Reporting Requirements

To implement the reporting requirements in section 1923(j)(1) of the Act, we are proposing to modify the DSH reporting requirements in Federal regulations at 42 CFR 447.

Currently, under § 447.299, each State is required to report and maintain certain information about DSH program spending. Under § 447.299(a) and (b), each State is required to submit and report to CMS the quarterly aggregate amount of DSH payments. Each State is also required, under § 447.299(c), to maintain and make available upon request supporting documentation for the State's DSH program, including the amount of DSH payments to each individual hospital each quarter. Section 447.299(d) provides that future grant awards may be deferred or disallowed if a State fails to comply with these reporting requirements.

We are proposing to add a new paragraph (c) to the reporting requirements in § 447.299. We are proposing to redesignate the documentation requirements in paragraph (c) as paragraph (d) and redesignate the deferrals and disallowances information in paragraph (d) as paragraph (e), respectively. We are proposing that the following information reflects the data elements necessary to ensure that DSH payments are appropriate such that each qualifying hospital receives no more in DSH payments than the amount permitted under section 1923(g) of the Act. Specifically, proposed paragraph (c) would require each State receiving an allotment under section 1923(f) of the Act, beginning with the first full State fiscal year (SFY) immediately after the enactment of section 1001(d) of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) and each year thereafter, to report to us the following information for each DSH hospital:

- Hospital Name.
- Medicare Provider Number.
- Medicaid Provider Number.
- Type of Hospital. The State would indicate if the hospital is an acute, long-term care, psychiatric, teaching, children's, rehabilitation, or other facility. If other facility, the State would be asked to specify the type.
- Type of Hospital Ownership. The State would indicate whether the hospital is a privately-owned, State government-owned, non-State government-owned, or a facility owned by the Indian Health Service, or a tribal government. The State would also

indicate whether the hospital is privately operated, State-government operated, non-State government operated, or a facility operated by the Indian Health Service, or a tribal government.

• Medicaid Inpatient Utilization Rate. The State would indicate the hospital's Medicaid inpatient utilization rate, as defined in section 1923(b)(2) of the Act.

• Low Income Utilization Rate. The State would indicate the hospital's low income utilization rate, as defined in section 1923(b)(3) of the Act. The low income utilization rate determination should only include those individuals that have no source of third party coverage for the inpatient hospital services they receive.

• DSH Payments. The State would indicate the total annual DSH payments made to the hospital. States need only report the single, aggregate annual amount of DSH payments made to the hospital, regardless of the number of separate DSH pools or the number of individual payments.

• Regular Medicaid Rate Payments. The State would indicate the total annual amount paid to the hospital by the State, not including any DSH payments or supplemental/enhanced payments, for inpatient hospital and outpatient hospital services furnished to Medicaid eligible individuals.

• Medicaid Managed Care Organization Payments. The State would indicate the total annual amount paid to the hospital by Medicaid managed care organizations for inpatient hospital and outpatient hospital services furnished to Medicaid eligible individuals.

• Supplemental/Enhanced Medicaid Payments. The State would indicate the total annual amount of supplemental/enhanced Medicaid payments made to the hospital by the State for inpatient hospital and outpatient hospital services furnished to Medicaid eligible individuals. These amounts do not include DSH payments, regular Medicaid rate payments, and Medicaid managed care organization payments.

• Indigent Care Revenue. The State would indicate the total annual payments received by the hospital from individuals with no source of third party coverage for inpatient hospital and outpatient hospital services they receive.

• Transfers. The State would indicate the total annual amount of funds transferred by the hospital to the State or local governmental entity as a condition of the hospital receiving any Medicaid payment or DSH payment.

• Total Cost of Care. The State would indicate separately the total annual costs incurred for furnishing inpatient hospital and outpatient hospital services provided to Medicaid individuals and the total costs incurred for furnishing those services provided to individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

• Uncompensated Care Costs. The State would indicate separately the total annual amount of uncompensated care costs for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the inpatient hospital and outpatient services they receive. The total annual uncompensated care cost equals the total cost of care for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive less the sum of regular Medicaid rate payments, Medicaid managed care organization payments, supplemental/enhanced Medicaid payments, and indigent care revenue). Uncompensated care costs do not include bad debt or payer discounts.

• Medicaid Eligible and Uninsured Individuals. The State would indicate the total annual unduplicated number of Medicaid eligible individuals receiving inpatient hospital and outpatient hospital services and the total annual unduplicated number of individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

Section 1011, Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens, of the MMA, requires that the Secretary directly pay hospitals and certain other providers for their otherwise un-reimbursed costs of providing services required by section 1867 of the Act (EMTALA) and related hospital inpatient, outpatient, and ambulance services furnished to undocumented aliens, aliens paroled into the United States at a U.S. port of entry for the purpose of receiving such services, and Mexican citizens permitted temporary entry to the U.S. with a laser visa. In addition, payment will be made from an allotment that varies by the number of undocumented aliens in each State. Provider payments are subject to a pro-rata reduction if the State allocation is insufficient to provide full reimbursement under the formula established by the Secretary.

In general, we believe that the receipt of a section 1011 payment will not impact the calculation of a hospital's Medicaid DSH payment amount if the hospital has not reached its DSH cap. For hospitals receiving DSH payments at or near their DSH limit, States will need to consider a section 1011 payment when determining the hospital's DSH limit, because the total DSH payments should not exceed the total amount of uncompensated care at the hospital.

To ensure uniform and timely data transmission, we have prepared an Excel spreadsheet for States to use to transmit their DSH information to us. The information supplied on this spreadsheet would satisfy the requirements under sections 1923(a)(2)(D) and 1923(j)(1) of the Act.

B. Audit Requirements

Section 1001(d) of the MMA amended section 1923(j)(2) of the Act to require States to annually submit to CMS an independent certified audit report that verifies information about DSH payments to hospitals. The statute specifies five items that require verification by an independent audit. Collectively, these five items will provide independent verification that State Medicaid DSH payments comply with the hospital-specific DSH limit in section 1923(g) of the Act, and that such limits are accurately computed.

In proposed § 455.201, we state that ''SFY'' stands for State fiscal year. In addition, we are proposing to define that an ''independent audit'' means an audit conducted according to the standards specified in the generally accepted government auditing standards issued by the Comptroller General of the United States.

Section 1923(j) of the Act requires that each State must submit annually the independent certified audit of its DSH program as a condition for receiving Federal payments under section 1903(a)(1) and 1923 of the Act. We are proposing to add a new § 455.204(a) to reflect this requirement.

As noted previously, each State must obtain an independent certified audit, beginning with an audit of its State fiscal year 2005 DSH program. We are proposing to add a new § 455.204(b) to reflect this requirement. We are proposing a submission requirement within 1 year of the independent certified audit.

In the audit report, the auditor must verify whether the State's method of computing the hospital-specific DSH limit and the DSH payments made to the hospital comply with the following five items required by section 1923(j)(2) of the Act:

• Verification 1: The extent to which hospitals in the State have reduced their uncompensated care costs to reflect the

total amount of claimed expenditures made under section 1923 of the Act.

Section 1923(g)(1) of the Act defines a hospital-specific limit on Federal financial participation for DSH payments. Each State must develop a methodology to compute this hospital-specific limit for each DSH hospital in the State. As defined in section 1923(g)(1) of the Act, the State's methodology must calculate for each hospital, for each fiscal year, the difference between the costs incurred by that hospital for furnishing inpatient hospital and outpatient hospital services during the applicable State fiscal year to Medicaid individuals and individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive, less all Medicaid payments made to the hospital for such hospital services and payments made by uninsured individuals for such hospital services. This difference, if any, between incurred inpatient hospital and outpatient hospital costs and associated Medicaid payments and other payments received from or on behalf of individuals with no source of third party coverage is considered the hospital's uncompensated care cost (UCC) limit. Federal financial participation is not available for DSH payments that exceed the hospital's UCC for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and individuals with no source of third party coverage in any given State fiscal year.

For purposes of Federal claiming, States report DSH expenditures to CMS. These DSH expenditures are matched at the Federal Medicaid Assistance Percentage. In some States, the non-Federal share of the DSH expenditures are funded by State and/or local government general fund appropriations. In other States, the DSH hospitals, either through intergovernmental transfers or certified public expenditures, fund the non-Federal share of the DSH expenditures. In determining compliance with the hospital-specific limit, total DSH expenditures, regardless of the source of the non-Federal share, cannot exceed the UCC.

We interpret section 1923(j)(2)(A) of the Act to require that the independent audit verify whether total claimed DSH expenditures for each hospital, including the non-Federal share, are included as revenues when determining whether DSH payments are less than or equal to each hospital's UCC. Obligations of the qualifying DSH hospital to fund the non-Federal share of a DSH payment or any other Medicaid payment cannot be included as uncompensated care for purposes of the hospital-specific DSH limit. We are proposing to add a new § 455.204(c)(1) to reflect the requirement that the audit report include a determination that qualifying hospitals in States have properly reduced their uncompensated care costs to reflect the total amount of claimed DSH expenditures.

- Verification 2: DSH payments to hospitals comply with the hospital-specific DSH limit.

We interpret section 1923(j)(2)(B) of the Act to require that the audit verify whether claimed DSH expenditures for each eligible hospital are less than or equal to the hospital's UCC. In order to evaluate compliance with this hospital-specific DSH limit, DSH payments made in the audited State fiscal year (SFY) must be measured against the actual uncompensated care costs in that same audited SFY, which for all States will begin with their respective SFY 2005. We are proposing to add a new § 455.204(c)(2) to reflect the requirement that the audit report include a determination that DSH payments to each qualifying hospital in the State comply with the hospital-specific DSH payment limit, that is, the DSH payments do not exceed the uncompensated care for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

- Verification 3: Only uncompensated care costs of providing inpatient and outpatient hospital services to Medicaid eligible individuals and uninsured individuals are included in the hospital-specific DSH payment limit.

The independent audit must verify whether the hospital-specific DSH limits calculated by the State include only costs incurred for inpatient hospital and outpatient hospital services furnished to Medicaid eligible individuals and to individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

First, the audit must verify whether the State has included only costs incurred for inpatient hospital and outpatient hospital services in the estimate of uncompensated care costs for each DSH hospital. Medicaid regulations at § 440.10 and § 440.20(a) define inpatient hospital services and outpatient hospital services, which generally include facility services furnished under the direction of a physician or dentist. The uncompensated care costs of providing physician services cannot be included in the calculation of hospital-specific DSH limit. In some circumstances, government-owned and operated hospitals fund the non-Federal share of DSH and other Medicaid payments through intergovernmental transfers to the State. These intergovernmental transfers cannot be considered an incurred cost for the purposes of calculating the hospital-specific DSH limits. The audit must verify whether the State has excluded such transfer amounts when determining hospitals' costs for the purposes of the hospital-specific DSH limits.

Second, the audit must verify that only costs incurred for Medicaid eligible individuals and uninsured individuals are included in the hospital-specific limit calculation. Medicaid eligible individuals are those individuals that a State has determined to be eligible for its Federal Medicaid program in accordance with applicable eligibility requirements. Uninsured individuals are individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

We are proposing to add a new § 455.204(c)(3) to reflect the requirement that the audit report include a determination that each qualifying hospital's DSH limit is determined by including only the uncompensated care costs for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

- Verification 4: The State included all payments under this title, including supplemental payments, in the calculation of hospital-specific DSH payment limits.

This provision requires the audit to verify that all sources of Medicaid payments received by a hospital are fully counted in the State's calculation of the hospital-specific DSH limits. For example, a State might supplement the Medicaid payments that are made to hospitals under a prospective payment system with additional/enhanced non-DSH Medicaid payments. Under these circumstances, the total amount of these supplemental/enhanced Medicaid payments should be added to all other Medicaid payments received by the hospital to determine the hospital's UCC.

In addition, the audit must verify whether or not the State has properly accounted for all Medicaid payments in the calculation of uncompensated care

costs, regardless of whether Medicaid payments exceeded the incurred cost of furnishing inpatient hospital and outpatient hospital services to Medicaid patients. For purposes of this hospital-specific DSH limit, Medicaid payments made to a DSH hospital for furnishing inpatient hospital and outpatient hospital services that are in excess of the Medicaid incurred costs of such services should be applied against the uncompensated care costs of furnishing inpatient hospital and outpatient hospital services to patients with no source of third party coverage for such services. That is, Medicaid ''overpayments'' for Medicaid individuals must be used to offset any shortfalls in payment for uninsured individuals. Therefore, the audit must verify whether the State has appropriately calculated uncompensated care costs by subtracting total, combined payments for Medicaid and uninsured payments from total, combined incurred costs of furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive. We are proposing to add a new § 455.204(c)(4) to reflect the requirement that the audit report include a determination that States properly account for all Medicaid payments, including regular Medicaid rates and Medicaid supplemental/enhanced payments, made to hospitals for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals.

• Verification 5: The State has separately documented and retained a record of all its costs under this Medicaid program, claimed expenditures under this Medicaid program, uninsured costs in determining payment adjustments under this section, and any payments made on behalf of the uninsured from payment adjustments under this section.

This provision requires that the audit verify whether the State has collected and continues to maintain appropriate documentation for its calculation of hospital-specific DSH limits and for the payments made to eligible hospitals. We are proposing to add a new § 455.204(c)(5) to reflect the requirement that the audit report include a determination that the State has collected, documented, and is retaining appropriate documentation for its DSH limits calculation and payments to the qualified hospitals.

As part of the documentation verification, the audit report must describe the methodology used by the State to calculate each hospital's limit under section 1923(g)(1) of the Act. Included in the description of the methodology, the audit report must specify how the State defines incurred inpatient hospital and outpatient hospital costs. We are proposing to add a new § 455.204(c)(6) to reflect the requirement that the audit report include a determination that each State employs an appropriate methodology for calculating the hospital-specific DSH limit.

IV. 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.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

The following information collection requirements and associated burdens are subject to the PRA.

We also received one public comment responding to the proposed requirements for a Medicaid Disproportionate Share Annual Report for Hospitals and Institutions in the **Federal Register** notice dated March 26, 2004, (69 FR 15853). We have determined that there was an error in the Collection of Information portion of that notice and are drafting a correction notice for publication.

Section 447.299 Reporting Requirements

In summary, paragraph (c) of this section requires the States to submit to CMS information for each DSH for the most recently-completed State fiscal year beginning with the first full State fiscal year (SFY) after the enactment of section 1001(d) of the MMA, which for all States will begin with their respective SFY 2005 and each subsequent SFY. This paragraph presents the information to be submitted.

The burden associated with this requirement is the time and effort for the States to prepare and submit the required information. We estimate that it will take each State approximately 30 minutes to prepare and submit the information for each of its DSHs. On average, each State has approximately 75 DSHs. Therefore, we estimate it will take 38 hours per State to comply for a total of 1,976 annual hours.

Section 455.202 Audit Reporting Requirements

In summary, this section states what information must be included in the audit report.

The PRA exempts the information collection activities referenced in this section. In particular, 5 CFR 1320.4 excludes collection activities during the conduct of administrative actions, investigations, or audits involving an agency against specific individuals or entities.

Section 455.203 Submission Date

In summary, this section requires States to submit to us an independent certified audit.

The PRA exempts the information collection activities referenced in this section. In particular, 5 CFR 1320.4 excludes collection activities during the conduct of administrative actions, investigations, or audits involving an agency against specific individuals or entities.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Jimmy Wickcliffe, CMS–2198–P Room C5–11–04, 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: Katherine Astrich, CMS Desk Officer.

Comments submitted to OMB may also be e-mailed to the following address: e-mail: *Katherine_T._Astrich*

@omb.eop.gov; or faxed to OMB at (202) 395–6974.

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. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This 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 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 the 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 expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 447

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

42 CFR Part 455

Fraud, Grant programs-health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 447—PAYMENTS FOR SERVICES

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

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

2. Section 447.299 is amended by—

A. Redesignating existing paragraphs (c) and (d) as paragraphs (d) and (e).

B. Adding a new paragraph (c) to read as set forth below.

§ 447.299 Reporting requirements.

* * * * *

(c) Beginning with each State's fiscal year 2005 and each subsequent State fiscal year, States must submit to CMS the following information for each DSH hospital:

(1) *Hospital name.*

(2) *Medicare provider number.*

(3) *Medicaid provider number.*

(4) *Type of hospital.* Indicate whether the hospital is an acute, long-term care, psychiatric, teaching, children's, rehabilitation, or other facility. If other facility, specify the type.

(5) *Type of hospital ownership.* Indicate whether the hospital is owned by a private entity, State government, non-State government, the Indian Health Service, or a tribal government. Indicate whether the hospital is operated by a private entity, State government, non-State government, the Indian Health Service, or a tribal government.

(6) *Medicaid inpatient utilization rate.* Indicate the hospital's Medicaid inpatient utilization rate, as defined in section 1923(b)(2) of the Act.

(7) *Low income utilization rate.* Indicate the hospital's low income utilization rate, as defined in section 1923(b)(3) of the Act. The low income utilization rate calculation only includes individuals that have no source of third party coverage for the inpatient and/or outpatient hospital services they receive.

(8) *Disproportionate share hospital payments.* Indicate total annual payment adjustments made to the hospital under section 1923(g) of the Act.

(9) *Regular Medicaid rate payments.* Indicate the total annual amount paid to the hospital by the State, not including DSH payments or supplemental/enhanced Medicaid payments, for inpatient and outpatient services furnished to Medicaid eligible individuals.

(10) *Medicaid managed care organization payments.* Indicate the total annual amount paid to the hospital by Medicaid managed care organizations for inpatient hospital and outpatient hospital services furnished to Medicaid eligible individuals.

(11) *Supplemental/enhanced Medicaid payments.* Indicate the total annual amount of supplemental/enhanced Medicaid payments made to the hospital by the State for inpatient hospital and outpatient hospital services furnished to Medicaid eligible individuals. These amounts do not include DSH payments, regular Medicaid rate payments, and Medicaid managed care organization payments.

(12) *Indigent care revenue.* Indicate total annual payments received by the

hospital from individuals with no source of third party coverage for inpatient and outpatient hospital services they receive.

(13) *Transfers.* Indicate the total annual amount of funds transferred by the hospital to the State or local governmental entity as a condition of the hospital receiving any Medicaid payment or DSH payment.

(14) *Total cost of care.* Indicate separately the total annual costs incurred for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and the total costs incurred for furnishing inpatient hospital and outpatient hospital services to individuals with no source of third party coverage for the hospital services they receive.

(15) *Uncompensated care costs.* Indicate separately the total annual amount of uncompensated care costs for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the hospital services they receive. The total annual uncompensated care cost equals the total cost of care for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and to individuals with no source of third party coverage for the hospital services they receive less the sum of regular Medicaid rate payments, Medicaid managed care organization payments, supplemental/enhanced Medicaid payments, and indigent care revenue. Uncompensated care costs do not include bad debt or payer discounts.

(16) *Medicaid eligible and uninsured individuals.* Indicate the total annual unduplicated number of Medicaid eligible individuals receiving inpatient hospital and outpatient hospital services and the total annual unduplicated number of individuals with no source of third party coverage for the inpatient hospital and outpatient hospital they receive.

* * * * *

PART 455—PROGRAM INTEGRITY: MEDICAID

1. The authority citation for part 455 continues to read as follows:

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

2. Add new subpart C to read as follows:

Subpart C—Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments

Sec.

455.200 Purpose.
455.201 Definitions.
455.204 Condition for Federal financial participation (FFP).

Subpart C—Independent Certified Audit of State Disproportionate Share Hospital Payment Adjustments

§ 455.200 Purpose.

This subpart implements section 1923(j)(2) of the Act.

§ 455.201 Definitions.

For the purposes of this subpart—

Independent certified audit means an audit that is conducted in accordance with generally accepted government auditing standards, as defined by the Comptroller General of the United States.

SFY stands for State fiscal year.

§ 455.204 Condition for Federal financial participation (FFP).

(a) *General rule.* A State must submit an independent certified audit to CMS, according to the requirements in this subpart, to receive Federal disproportionate share hospital (DSH) payment under sections 1903(a)(1) and 1923 of the Act.

(b) *Timing.* Beginning with FY 2005, a State must submit to CMS an independent certified audit report no later than 1 year after the completion of each State's fiscal year.

(c) *Specific requirements.* The independent certified audit report must verify the following:

(1) Each hospital that qualifies for a DSH payment in the State has reduced its uncompensated care costs for furnishing inpatient hospital and outpatient hospital services during the SFY to Medicaid eligible individuals and individuals with no source of third party coverage for the services in order to reflect the total amount of claimed DSH expenditures.

(2) DSH payments made to each qualifying hospital comply with the hospital-specific DSH payment limit. For each audited SFY, the DSH payments made in that audited SFY must be measured against the actual uncompensated care cost in that same audited SFY.

(3) Only uncompensated care costs of furnishing inpatient and outpatient hospital services to Medicaid eligible individuals and individuals with no third party coverage for the inpatient and outpatient hospital services they receive as described in section 1923(g)(1)(A) of the Act are included in the calculation of the hospital-specific disproportionate share limit payment limit, as described in section 1923(g)(1)(A) of the Act.

(4) For purposes of this hospital-specific limit calculation, any Medicaid payments (including regular Medicaid rate payments, supplemental/enhanced Medicaid payments, and Medicaid managed care organization payments) made to a disproportionate share hospital for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals, which are in excess of the Medicaid incurred costs of such services, are applied against the uncompensated care costs of furnishing inpatient hospital and outpatient hospital services to individuals with no source of third party coverage for such services.

(5) Any information and records of all of its inpatient and outpatient hospital service costs under the Medicaid program; claimed expenditures under the Medicaid program; uninsured inpatient and outpatient hospital service costs in determining payment adjustments under this section; and any payments made on behalf of the uninsured from payment adjustments under this section has been separately documented and retained by the State.

(6) The information specified in paragraph (c)(5) of this section includes a description of the methodology for calculating each hospital's payment limit under section 1923(g)(1) of the Act. Included in the description of the methodology, the audit report must specify how the State defines incurred inpatient hospital and outpatient hospital costs for furnishing inpatient hospital and outpatient hospital services to Medicaid eligible individuals and individuals with no source of third party coverage for the inpatient hospital and outpatient hospital services they receive.

(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: January 5, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 5, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–16974 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–01–10886]

RIN 2126—AA69

Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) withdraws its March 19, 2002, notice of proposed rulemaking (NPRM), which proposed requiring each commercial motor vehicle (CMV) operating in interstate commerce to display a label applied by the vehicle manufacturer or a registered importer to document the vehicle's compliance with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect as of the date of manufacture. We issued the NPRM in coordination with the National Highway Traffic Safety Administration (NHTSA), which published on the same day three companion notices related to the FMVSS certification requirement. Although the NPRM would have applied to all CMVs operated in the United States, its greatest impact would have been on motor carriers domiciled in Canada and Mexico. In withdrawing the NPRM, we conclude the proposed FMVSS certification label requirement is not necessary to ensure the safe operation of CMVs on our nation's highways. Vehicles operated by Canada-domiciled motor carriers meet Canadian Motor Vehicle Safety Standards (CMVSSs), which are consistent with the FMVSSs in all significant respects. Furthermore, since the FMVSSs critical to the operational safety of CMVs are cross-referenced in the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA, in consultation with NHTSA, has determined it can most effectively achieve the compliance of CMVs with the FMVSS through enforcement measures and existing regulations ensuring compliance with the FMCSRs, making additional FMVSS certification-labeling regulation unnecessary.

DATES: The notice of proposed rulemaking published on March 19, 2002, at 67 FR 12782, is withdrawn as of August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2002, FMCSA and NHTSA published four notices requesting public comments on regulations and policies directed at enforcement of the statutory prohibition on the importation of commercial motor vehicles that do not comply with the applicable FMVSSs. The notices were issued as follows: (1) FMCSA's notice of proposed rulemaking (NPRM) proposing to require motor carriers to ensure their vehicles display an FMVSS certification label (67 FR 12782); (2) NHTSA's proposed rule to issue a regulation incorporating a 1975 interpretation of the term ''import'' (67 FR 12806); (3) NHTSA's draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label attesting this (67 FR 12790); and (4) NHTSA's proposed rule concerning recordkeeping requirements for manufacturers that retroactively certify their vehicles (67 FR 12800).

In addition to the proposal concerning FMVSS certification, FMCSA published on that same day (March 19, 2002) three interim rules and a final rule related to implementation of the North American Free Trade Agreement (NAFTA). The interim final rules were ''Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border'' (67 FR 12702), ''Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States'' (67 FR12758), and ''Certification of Safety Auditors, Safety Investigators, and Safety Inspectors'' (67 FR 12776). The final rule was ''Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border'' (67 FR 12652).

NHTSA and FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA establishes manufacturing standards—the FMVSS—under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563) (Vehicle Safety Act). Part 567 of title 49, Code of Federal Regulations (49 CFR Part 567), requires manufacturers or registered importers of motor vehicles built for sale or use in the United States to affix a label certifying the motor vehicle meets the applicable FMVSSs in effect on the date of manufacture.

Under 49 U.S.C. 31136(a), the Secretary of Transportation (Secretary) has authority (delegated to FMCSA by 49 CFR 1.73) to prescribe minimum safety standards for commercial motor vehicles to ensure these vehicles are maintained, equipped, loaded, and operated safely. FMCSA also has been delegated authority to prescribe requirements for the safety of operation and equipment of motor carriers operating in interstate commerce. See 49 U.S.C. 31502(b). The agency's regulatory authority encompasses the safe operation of CMVs in interstate and foreign commerce, motor carriers conducting these operations, and CMV drivers. FMCSA's safety regulations, the Federal Motor Carrier Safety Regulations (FMCSRs), are codified in 49 CFR parts 325–399.

FMCSA's withdrawal of this NPRM is consistent with NHTSA's Notice of Withdrawal of Proposed Policy Statement published elsewhere in today's **Federal Register**. NHTSA has decided to withdraw a 1975 interpretation in which the agency had indicated that the Vehicle Safety Act is applicable to foreign-based motor carriers operating in the United States. Although FMCSA is withdrawing its NPRM, we will uphold the operational safety of commercial motor vehicles on the nation's highways—including that of Mexico-domiciled CMVs operating beyond the U.S.-Mexico border commercial zones—through continued vigorous enforcement of the FMCSRs, many of which cross-reference specific FMVSSs. Mexico-domiciled motor carriers are required under 49 CFR 365.503(b)(2) and 368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. Further, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. This inspection will include checking compliance with part 393 of the FMCSRs and the FMVSSs they cross-reference. These vehicles also will be subject to inspection by enforcement

personnel at U.S.-Mexico border ports of entry and at roadside in the United States to ensure their compliance with applicable FMCSRs, including those that cross-reference the FMVSSs. For vehicles lacking a certification label, it has been determined that enforcement officials could, as necessary, refer to the VIN (vehicle identification number) in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSS or CMVSS.

As described in an FMCSA policy memorandum, ''Enforcement of Mexico-Domiciled Motor Carriers' Self-Certification of Compliance with Motor Vehicle Safety Standards,'' if FMCSA finds, during the pre-authority audit or subsequent inspections, that a Mexico-domiciled carrier has falsely certified its vehicles as FMVSS compliant, we may use this information to deny, suspend, or revoke the carrier's operating authority or certification of registration or issue appropriate penalties for the falsification. We are issuing this policy memorandum to FMCSA field offices and our State enforcement partners under the Motor Carrier Safety Assistance Program (MCSAP). A copy of the memorandum is available in the docket.

Discussion of Comments to the NPRM

The following organizations commented on the agency's NPRM to require that motor carriers ensure their vehicles display an FMVSS certification label: Advocates for Highway and Auto Safety (Advocates); the Amalgamated Transit Union (ATU); the American Insurance Association (AIA); the American Trucking Associations (ATA); the Embassy of Canada (Canada); the Canadian Transportation Equipment Association (CTEA); the Canadian Trucking Alliance (CTA); the Canadian Vehicle Manufacturers Association (CVMA); the Commercial Vehicle Safety Alliance (CVSA); the California Highway Patrol (CHP); Greyhound Lines, Inc. (Greyhound); the International Brotherhood of Teamsters (IBT); Manitoba Transportation and Government Services (Manitoba); the Missouri State Highway Patrol, Commercial Vehicle Enforcement Division (Missouri CVED); the National Truck Equipment Association (NTEA); Public Citizen; the Transportation Trades Department, AFL-CIO (TTD); and the Truck Manufacturers Association (TMA).

Many commenters submitted identical comments to the dockets for the FMCSA and NHTSA proposals published on March 19, 2002, as well as to the four other NAFTA-related rules FMCSA published that day. The comments summarized below are discussed in the context of FMCSA's NPRM regarding the FMVSS certification label.

General Comments

Most of the commenters expressed concern that the proposal would require a complex and difficult-to-implement process involving replacement of compliance labels and re-creation of manufacturers' performance test documentation for vehicles long in use. Many commenters noted this would not address the fundamentals of what is necessary to ensure CMVs operate safely. They questioned the safety benefits of requiring a certification label, given that all CMVs operated in the United States are required both to comply with the FMCSRs and to pass roadside inspections conducted by safety officials according to standard Federal inspection procedures.

CVSA stated the consensus among its member jurisdictions was ''that implementation of the NPRM would not resolve any safety issues, but instead would create a significant economic effect on cross-border trade, and domestic commercial transportation.''

TMA supported the agency's efforts to ensure commercial motor vehicles manufactured in Canada and Mexico meet the same safety standards required of CMVs manufactured for the U.S. market. However, TMA believed both the FMCSA proposal and NHTSA's proposed policy statement on retroactive certification invited compliance problems and could impact U.S. motor carriers adversely. CVMA supported TMA's position, adding it believes better opportunities exist for improving CMV safety through vehicle maintenance and enforcement of safety regulations. It cited programs adopted by the Province of Ontario as examples.

CTEA, a trade association representing vehicle and equipment manufacturers and the provider of a label service to Canadian and U.S. commercial motor vehicle manufacturers registered with Transport Canada and NHTSA, was encouraged that FMCSA addressed the issue of certification compliance labels. CTEA believes, however, the most effective way to improve CMV roadworthiness is for operators to adhere to manufacturers' maintenance schedules and practices, and for recommended inspection procedures to be used.

NTEA, a U.S. trade association representing distributors of multistage-produced, work-related trucks, truck bodies, and equipment, expressed a number of concerns about the practicality of implementing the proposed requirements. NTEA's concerns are discussed in detail under *Reciprocity with Canadian Standards* and the two sections on *Replacement Labels* below.

ATA stated it supports truck safety achieved through ''reasonable and cost-effective measures,'' applied appropriately according to operations conducted and equipment used. ATA believes achieving safe operations does not depend on the presence of a certification label. It asserted FMCSA has provided no data indicating vehicles without certification labels operate unsafely, adding it is unaware of the existence of such data. CVSA, CTA, Missouri CVED, and Manitoba made similar comments.

Canada asserted ''there is no credible case that extending [the FMVSS labeling requirements] to Canadian commercial vehicles would result in increased safety.'' Canada referred to studies showing Canadian CMVs operating in the United States to be as safe as, or safer than, U.S.-based CMVs, and claimed it would be difficult, costly, and in some cases impossible to comply with the proposed regulation. Canada also anticipated the proposal would have a serious negative impact on cross-border trade and tourism, as well as violate United States obligations under both NAFTA and the Marrakesh Agreement Establishing the World Trade Organization. Canada contended the rule would provide less favorable treatment to Canadian motor carriers than to U.S. carriers, and would restrict trade more than is necessary to achieve safety objectives.

CTA stated the safety of Canadian motor carriers operating in the United States would not be diminished absent the provisions of the NPRM. CTA estimates there are at least 250,000 CMVs regularly engaged in cross-border traffic, but believes the number could be much higher: ''Since carriers do not segregate their fleets into 'domestic' and 'international' equipment, from a practical standpoint, all equipment in fleets with cross-border operations would fall under the proposed labeling requirements.''

Seven commenters favored the proposal:

Greyhound contended Mexico-manufactured buses ''did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now,'' and asserted it would be highly inappropriate for DOT to allow these vehicles to operate in the United States.

ATU stated it concurs with Greyhound's comments.

Advocates, acknowledging NAFTA requires elimination of trade barriers and unnecessary burdens on commerce, stressed that the treaty ''was not intended to require the evasion or suspension of established motor vehicle regulations and safety standards.'' AIA supported Advocates' position.

Citing the requirements of the Vehicle Safety Act and a 1975 interpretation letter issued by NHTSA, CHP supported the proposal for the certification and labeling requirements.

Public Citizen stated the proposed NHTSA and FMCSA regulations ''close an unofficial loophole'' in the agencies' regulations. IBT also supported the FMCSA proposal.

FMCSA Response: Generally, U.S. motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce have access only to vehicles that either were manufactured domestically for use in the United States and have the required certification label or were imported into the United States in accordance with applicable NHTSA regulations, including certification documentation requirements of 49 CFR Part 567. Furthermore, FMCSA's safety regulations incorporate and cross-reference the FMVSSs critical to continued safe operation of CMVs. Finally, with only a few minor differences, the Canadian Motor Vehicle Safety Standards (CMVSSs) mirror the FMCSRs.

Although Mexico-domiciled vehicles are less likely to display FMVSS or CMVSS certification labels, FMCSA believes continued strong enforcement of the FMCSRs in real-world operational settings, coupled with existing regulations and enhanced enforcement measures, will ensure the safe operation of Mexico-domiciled CMVs in interstate commerce. Under the MCSAP, FMCSA and its State and local partners conduct approximately 3 million roadside vehicle and driver inspections each year on vehicles (domiciled in the United States, Canada, or Mexico) operating in interstate commerce. Enforcement of the FMCSRs, and by extension the FMVSSs they cross-reference, is the bedrock of these compliance assurance activities. Therefore, after careful consideration, FMCSA has concluded it is not necessary to amend the FMCSRs to require commercial motor vehicles to display an FMVSS certification label in order to achieve effective compliance with the FMVSSs.

Simply requiring CMVs to bear FMVSS certification labels would not ensure their operational safety. An FMVSS label certifying compliance with performance standards applicable to lights, brakes, and other wear items does not ensure real-world safety in the absence of compliance with the operational and maintenance standards imposed by the FMCSRs, especially in the case of vehicles built many years ago. Although the presence or absence of an FMVSS compliance label can certainly provide a useful tool in this regard, inspection of the CMV's compliance with the FMCSRs remains the benchmark by which enforcement officials identify and remove from service vehicles likely to break down or cause a crash. The American public is better protected by the FMCSRs than solely through a label indicating a CMV was originally built to certain manufacturing performance standards.

Congress intended the FMVSSs and FMCSRs as mutually supportive systems of regulations—one manufacturing, the other operational. In the Vehicle Safety Act, which mandated creation of the manufacturing standards, Congress specified that the preexisting motor carrier safety regulations promulgated by the Interstate Commerce Commission should not differ in substance or impose any lesser standard of performance than the manufacturing standards. (See also Senate Commerce Committee Report No. 1301, June 23, 1966.) After the establishment of DOT on April 1, 1967, the FMVSSs and motor carrier safety regulations (now FMCSRs) were in fact coordinated under a single agency, the Federal Highway Administration, wherein they were redesignated in December 1968 under newly established chapter III of title 49 of the Code of Federal Regulations (33 FR 19700, Dec. 25, 1968).

Since that time, care has been taken in rulemaking proceedings amending the FMVSSs or FMCSRs to effectuate the Congressional intent of consistent and mutually supportive regulations. For example, FHWA and the National Highway Safety Bureau (NHSB) (which became part of NHTSA when that agency was established in 1971) coordinated same-day publication of complementary regulatory proposals on August 15, 1970—with NHSB proposing an FMVSS on bus push-out windows to provide a complementary manufacturing standard to an existing motor carrier safety regulation, while the FHWA proposed to amend its existing regulations concerning window construction in order to be consistent with the NHSB proposal. (The FHWA and NHSB proposals were published at 35 FR 13024 and 13025, respectively, and FHWA's final rule [37 FR 11677, June 10, 1972] made the agency's bus window requirements consistent with the new FMVSS standard [No. 217, published at 37 FR 9395 on May 10, 1972]). The most recent example is FMCSA's final rule, ''Parts and Accessories Necessary for Safe Operation; General Amendments'' (Docket Number FMCSA–1997–2364), which updates and expands FMCSR cross-references to FMVSSs and includes applicable engineering citations. As a result of the Congressional directive that the FMCSRs provide for performance no less than the FMVSSs and the history of consistency between the two bodies of regulations, enforcement of the FMCSRs assures compliance with the FMVSSs cross-referenced therein—and, more important, provides for safety on the highways.

Reciprocity With Canadian Standards

TMA recommended either a U.S. or Canadian certification label be accepted for commercial motor vehicles manufactured before the effective date of the NHTSA policy statement on retroactive certification. The only major differences between the U.S. and Canadian manufacturing standards are the effective dates (also called compliance dates) for the requirements for antilock brake systems (ABS) and automatic brake adjusters. Since all vehicles operating in the United States must comply with the FMCSRs, and the FMCSRs for automatic brake adjusters (§ 393.53) and ABS (§ 393.55) require CMVs to comply with FMVSS No. 105 (for hydraulic-braked vehicles) and FMVSS No. 121 (for air-braked vehicles) applicable at the time the vehicle was manufactured, the different compliance dates for U.S. and Canadian standards are moot. ATA, CTA, and NTEA also stressed the strong similarities between the U.S. and Canadian standards.

CVMA asserted the potential safety benefits of retroactive certification of CMVs built to comply with Canadian standards would be minimal and, under the proposal, retroactive certification would also include modifications made to vehicles after manufacture. It noted this would require not only consideration of the records of original and secondary manufacturers but also evaluation of repairs and modifications made by vehicle owners.

CVSA and CTA strongly encouraged DOT to consider developing a reciprocity agreement with Canada because the CMVSSs are so similar to the FMVSSs. Manitoba noted that some Canadian standards are ''more stringent than the U.S. standards,'' citing requirements for daytime running lights and underride protection.

CTEA stated ''* * * Canadian manufacturers registered with Transport Canada are entitled to affix a National Safety Mark (NSM) to their production. These same companies are registered with NHTSA for the purpose of exporting to the U.S. and they have met the label requirements for the U.S.'' TMA, CTEA, NTEA, and CTA expressed similar views.

CVSA, CTEA, and Manitoba believed Canadian authorities might require U.S.-manufactured vehicles entering Canada to display a CMVSS certification label, leading to disruptions in cross-border commerce.

Canada cited a 30-year history of ''close and effective collaboration'' with the United States to develop and implement CMV manufacturing and operating standards. It provided extensive analysis comparing the safety records of U.S. and Canadian motor carriers, citing results of FMCSA and DOT studies.

FMCSA Response: FMCSA, in consultation with NHTSA, agrees U.S. and Canadian CMV manufacturing standards are comparable in all significant respects. As TMA noted, the differences in effective dates for the Canadian and U.S. requirements for ABS and automatic brake adjusters are moot, because the effective dates of the *FMVSS* requirements, as incorporated in part 393 of the FMCSRs, determine whether a CMV is compliant with these standards. For example, a Canada-domiciled vehicle bearing a CMVSS label and manufactured on or after the effective date of NHTSA's ABS requirement (and before the effective date of Canada's ABS requirement) would be in violation of the FMCSRs when operating in the United States unless it were equipped with ABS. This distinction would have held even if the vehicle met the certification labeling requirement proposed in the NPRM. The same principle applies to U.S.-required conspicuity treatments, brake adjusters, brake adjustment indicators, and rear impact guards. The effective dates for FMVSSs incorporated in the FMCSRs apply equally to CMVs domiciled in the United States, Canada, and Mexico.

Moreover, an FMVSS or CMVSS certification label denotes only the vehicle's compliance with the U.S. or Canadian manufacturing standards applicable to newly *manufactured vehicles.* The certification label, while a useful guidepost, is not the most important basis for determining whether a vehicle is in current safe operating condition. CMV operational safety compliance is best addressed in terms of these vehicles' compliance with the FMCSRs.

In response to Manitoba's comment regarding rear underride protection and daytime running lamps, FMCSA's rules concerning rear impact guards were revised on September 1, 1999, to require motor carriers to ensure their trailers manufactured on or after January 26, 1998, are equipped with rear impact guards meeting the requirements of FMVSS Nos. 223 and 224 (49 CFR 571.223 and 571.224). FMVSS No. 108 (49 CFR 571.108) concerning lamps and reflective devices was amended on January 11, 1993, to ensure daytime running lights installed voluntarily on newly manufactured vehicles meet certain performance requirements. Section 393.11 of the FMCSRs cross-references FMVSS No. 108 and requires motor carriers to ensure their CMVs are maintained to comply with this requirement.

Canada's requirements for conspicuity treatment of trailers and semitrailers provide several options for the colors and placement of retroreflective material; one of these options meets the requirements of FMVSS No. 108. FMCSA has advised Canadian manufacturers, industry groups, and motor carriers that 49 CFR 393.11 requires all Canada-based trailers operated in the United States to comply with the FMVSS No. 108 requirements for conspicuity treatments on trailers manufactured on or after December 1, 1993. Section 393.11 cross-references FMVSS No. 108 and requires motor carriers to ensure CMVs manufactured after March 7, 1989, meet all applicable requirements of FMVSS No. 108 in effect on the date of manufacture. In addition, § 393.13 provides flexibility for retrofitting conspicuity treatments for trailers and semitrailers manufactured before December 1, 1993, by allowing the use of other colors or color combinations along the sides or lower rear of semitrailers and trailers until June 1, 2009.

Safety of Vehicles Manufactured for the Mexican Market

Greyhound expressed concern about the enforceability of the NPRM provisions: ''We state unequivocally that the vast majority of Mexican-manufactured buses did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now. Many of these buses do not comply with the FMVSS/FMCSR standards for fundamental safety items such as brakes, fuel systems, windows, and emergency exits.'' Greyhound believed the proposed requirement for the FMVSS certification label ''should ultimately ensure compliance with the FMVSS,'' but recommended FMCSA take additional action in the near term. Specifically, FMCSA should automatically deny provisional operating authority to motor carriers discovered during onsite safety audits to be noncompliant with the FMCSRs.

ATA, while acknowledging Mexican federal safety standards are less similar to the U.S. requirements than are the Canadian standards and do not include a requirement for certification labels, nevertheless contended the Mexican standards help ensure new vehicles incorporate needed safety features. It asserted vehicle manufacturers the world over are interested in building equipment that will be safe ''if driven correctly and maintained properly.'' ATA noted the requirements of the FMCSRs adequately address the safe operation of CMVs, whereas a label describes the vehicle's safety compliance only as of the date of manufacture.

CVSA stated ''Mexican safety standards do not require certification labels and do not mirror those of the U.S. as closely as Canadian standards, but their efforts to match U.S. standards, and in some cases surpass them (as with more restrictive drug and alcohol testing) ensures that important safety standards are being met.'' CVSA maintained there is no evidence to suggest Mexico-based vehicles ''provide less than desirable safety performance.'' In addition, CVSA stated the certification label ''does not provide evidence that the vehicle is safe, and it is impractical to place a vehicle Out of Service just because it is lacking a certification label.''

FMCSA Response: Regardless whether a CMV bears a certification label from a manufacturer or a registered importer, it must comply with all applicable FMCSRs, including those that cross-reference FMVSS requirements in effect on the date of manufacture. As noted earlier in this document, the certification label does not, in and of itself, fulfill motor carriers' obligations to comply with applicable FMCSRs—whereas compliance with FMCSRs does provide effective confirmation of compliance with the cross-referenced FMVSSs.

With regard to Greyhound's comments about denying provisional operating authority to Mexico-domiciled motor carriers whose CMVs are found during on-site audits to be noncompliant with the FMCSRs, Mexico-domiciled carriers are required under 49 CFR 365.503(b)(2) and

368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. If the motor carrier were unable to make the necessary certification on its application, the agency would deny its request to operate in the United States.

Moreover, as noted in the *Background* section of this document, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. The pre-authority safety audit evaluation criteria are in Appendix A to Subpart E of 49 CFR Part 365. If a pre-authority safety audit discloses an applicant has falsely certified its vehicles as FMVSS compliant, FMCSA may use this information to deny the application for provisional authority. In addition, as prescribed in the FMCSA policy memorandum discussed previously, if a motor carrier is discovered to be operating noncompliant vehicles in the United States after receiving provisional operating authority, the agency could suspend or revoke that authority based on the carrier's false certification.

The major potential obstacle to FMVSS conformance for truck tractors manufactured for the Mexican market appears to be the requirement for installation of ABS, applicable to vehicles manufactured on or after March 1, 1997. Because Mexico's vehicle safety regulations have not to date required ABS, many Mexico-based vehicles manufactured on or after March 1, 1997, did not include this feature and therefore do not bear an FMVSS certification label. However, information provided by the Truck Manufacturers Association in a September 16, 2002, letter to NHTSA Administrator Jeffrey W. Runge, M.D., and former FMCSA Administrator Joseph M. Clapp (available in the docket) offers a more complete picture.

According to TMA, U.S. manufacturers have manufactured and sold nearly 60,000 Class 8 trucks and tractors for the Mexican market since 1993. Roughly 80 percent of those vehicles were built in compliance with the FMVSSs and were so certified. KenMex, a subsidiary of Paccar, Inc., manufactures Kenworth trucks for sale in Mexico. KenMex began applying FMVSS certification labels in 1993 to all vehicles built for the Mexican market that met U.S. safety standards. Approximately 95 percent of those vehicles were equipped with ABS. International Truck and Engine Corporation trucks sold in Mexico complied with the FMVSSs, except that ABS could be deleted at the customer's option. However, the majority of International's tractors built and sold in Mexico from July 1999 until September 2001 had ABS, as did some vehicles manufactured between 1996 and 1999. Freightliner sold a limited number of vehicles to customers in Mexico before 1997, and all vehicles in three model lines sold in Mexico were certified to meet the FMVSSs. Volvo began selling U.S-manufactured trucks in Mexico in 1998, virtually all of them FMVSS-certified and bearing the requisite certification labels. We have summarized this information in the table below.

MANUFACTURERS' HISTORY OF TRUCKS AND TRUCK TRACTORS MANUFACTURED AND/OR SOLD IN MEXICO

Manufacturer	Manufactured in Mexico	Sold in Mexico	Notes
Ford	Yes: medium-duty	No	
Freightliner LLC			Sold limited number of vehicles in Mexico before 1997.
	Century Class	Yes	All have full U.S. certification.
	Columbia	Yes	All have full U.S. certification.
	Argosy	Yes	All have full U.S. certification.
	FLD	Yes	50% have full U.S. certification. 50% have label issues (tire labels, labels in Spanish). Approximately 20% of FLD vehicles do not have ABS.
	Sterling	Yes	10% have full U.S. certification. 90% have label issues, but have ABS.
General Motors	No	Yes	Sells only incomplete vehicles in Mexican market.
International Truck & Engine	Yes	Yes	9200, 9400: ABS was a "delete" option 3/97–9/01. 11/96–11/99: 1996 9000s do not bear FMVSS labels, but vehicles with ABS could be certified. Escobedo plant: 7/99–9/01: ABS "delete" option for 9000s, but majority had ABS. Starting 9/01, ABS no longer a "delete" option. 4000, 7000 series: tractors with ABS would have label.
Isuzu Motors	No	No	
Mack Trucks	No	No	Was in market for 1 year, sold 13 tractors, 12 chassis. Of the 13 tractors, 2 labeled & 6 retrofittable.
PACCAR Inc.	Yes—KenMex	Yes	At least 95% of the 40,000 T600, T800, T2000 and W900 vehicles have ABS. 1993 onward: FMVSS-compliant vehicles bear labels.
Volvo Trucks NA	No	Yes	3776 VN tractors labeled, 45 not labeled (no ABS). 2 VHD tractors labeled. 479 miscellaneous incomplete vehicles with chassis cab labels.

Based on the information presented in the table, we believe most model year 1996 and later CMVs manufactured in Mexico may meet the FMVSSs. (Since NHTSA's ABS requirement applies only to vehicles built on or after March 1, 1997, Mexico-domiciled vehicles manufactured before that date are required to comply with the FMVSSs applicable when they were built, but not with the ABS requirement.) Mexico-based vehicles manufactured on or after March 1, 1997, and not equipped with ABS would, in theory, need to be retrofitted with ABS to achieve compliance with the FMCSRs.

From a practical standpoint, however, this is not a viable option. Information

presented in the preamble to the Federal Highway Administration's final rule on ABS (63 FR 24454, May 4, 1998) explains the difficulty NHTSA researchers experienced in retrofitting commercial motor vehicles with ABS for the purpose of conducting a NHTSA fleet study. In that study, a relatively high number of truck tractors—116 out of 200, or 58 percent—experienced installation/pre-production design-related problems. Although the researchers attributed this to the ''newness'' of the systems in North American applications, we believe the percentage of malfunctions would be much greater if motor carriers were required to attempt retrofitting innumerable configurations of air-braked vehicles.

The NHTSA fleet study was a ''best-case scenario'' for retrofitting ABS, in that the vehicle and brake manufacturers (as well as wheel and hub manufacturers) worked together to complete the ABS installations. Even with this collaborative effort of experienced engineers, numerous problems related to the retrofitting process surfaced during the study. FMCSA believes the NHTSA research is strongly indicative of the types of technical problems that could be expected if motor carriers were required to retrofit vehicles with ABS. As ABS retrofitting is not practicable, vehicles manufactured on or after March 1, 1997—the effective date of NHTSA's ABS requirement (FMVSS number 121)—will satisfy U.S. safety requirements only if originally equipped with ABS. For a Mexico-domiciled CMV manufactured after March 1, 1997, FMCSA and State enforcement officials will rely closely on inspection of the vehicle to determine its compliance with the ABS requirement at § 393.55.

Consumer Responsibility: Certification Label

ATA asserted the statutory language of Section 108 of the Vehicle Safety Act ''precludes the need for the consumer to either apply or retain the certification label.'' ATA further contended Section 114 of the Vehicle Safety Act is a requirement placed upon vehicle manufacturers and distributors, and the label serves as a notification to the dealer (or to another distributor) that the manufacturer(s) of the vehicle met the FMVSSs as of a given date. ATA provided photographs of additional labels affixed by some manufacturers, reading ''Warning: Data shown on vehicle identification plate is correct on date of manufacture. Alterations made may affect data shown.''

CVSA also contended the proposals would expand what, in its view, has been the historical use of certification labels ''to provide buyer protection at the point of sale—in an attempt to regulate vehicles in interstate commerce.

FMCSA Response: Motor carriers are responsible for ensuring vehicles introduced into their fleets are maintained to the safety standards of the FMCSRs, including those cross-referencing the FMVSSs. However, FMCSA acknowledges the significant operational concerns raised by commenters. Prohibiting the operation of CMVs that are compliant with the FMVSSs and the FMCSRs, yet lack a certification label, would place an economic burden on motor carriers and vehicle manufacturers without enhancing commercial motor vehicle safety.

When it is necessary to determine whether the vehicle was certified by the manufacturer as complying with the FMVSSs, or was capable of certification, alternative identification methods are available. For example, Federal and State enforcement officials conducting roadside inspections could rely on a VIN and registration in a U.S. or Canadian jurisdiction as evidence of FMVSS compliance. The requirements for the VIN are described in 49 CFR Part 565. Section 565.4(e) requires the VIN of each vehicle to appear clearly and indelibly either upon a part of the vehicle (other than the glazing) that is not designed to be removed except for repair, or upon a separate plate or label permanently affixed to such a part. The VIN must have 17 characters and be formatted so basic information about the vehicle (such as country of manufacture, model year, identity of the manufacturer) can be quickly determined. Canada's requirements concerning the VIN are similar.

In addition to being marked on each vehicle, the VIN commonly is used to identify a vehicle on registration documents. Most State laws require these documents to be carried in the vehicle at all times. These registration documents provide a secondary method for safety officials to verify a CMV's model year and VIN and, by extension, the FMVSSs applicable to the particular CMV.

Generally, CMVs may not be registered in the United States or Canada unless the vehicle was manufactured for sale or use in either of those countries. Both countries have laws and regulations concerning the importation of vehicles for sale or use that effectively preclude U.S.- and Canada-based motor carriers from purchasing or leasing vehicles for use in their respective countries unless the vehicles were originally manufactured for, or subsequently modified for, such use. Under 49 U.S.C. 30112 and 30115 and 49 CFR parts 567 and 571, a U.S. motor carrier cannot purchase or use an imported vehicle manufactured for use in a foreign country unless (1) the original manufacturer certified, at the time of manufacture, that the vehicle complied with the applicable FMVSSs, or (2) a registered importer certified the vehicle was modified to comply with applicable U.S. safety standards.

The situation for Mexico-based CMVs is somewhat different. The government of Mexico has not, to date, established a set of vehicle manufacturing standards comparable in scope to the FMVSSs or CMVSSs, nor does it have requirements for certification or compliance with such standards. Hence, there is less assurance that vehicles imported into Mexico, or manufactured for the domestic market in Mexico, meet safety requirements comparable to those of the United States or Canada.

Therefore, we must rely on a strong verification program to confirm certifications (on the application form for FMCSA operating authority) by Mexico-domiciled carriers that they will operate only FMVSS-compliant CMVs in the United States beyond the border commercial zones. As noted in the *Background* section of this document, under FMCSA's enforcement policy memorandum these vehicles will be subject to inspection by enforcement personnel during the pre-authority safety audit and while operating in interstate commerce to ensure their compliance with applicable FMCSRs, including those that cross-reference the FMVSSs. If FMCSA finds a Mexico-domiciled carrier has falsely certified its vehicles as compliant, we may use this information to deny, suspend, or revoke the carrier's operating authority or certification of registration or issue appropriate penalties for the falsification.

Replacement Labels: General

TMA, ATA, and CVSA believed, contrary to FMCSA's assertion, the proposal would affect U.S. carriers more than their foreign counterparts. According to these and other commenters, safety certification labels, particularly those on trailers and converter dollies, often do not remain affixed or legible for the life of the vehicle.

ATA, CTA, NTEA, CTEA, and Canada raised numerous questions concerning the implementation of a requirement to obtain replacement labels. Among their

concerns: Replacement doors and cabs do not bear certification labels, 49 CFR § 567.4(b) prohibits labels from being transferred, and labels are designed to be self-defacing if removal is attempted. ATA, CTA, and Canada noted it would be impossible to obtain replacement certification labels from bankrupt or defunct manufacturers. NTEA recommended allowing motor carriers to replace certification labels, while TMA suggested a single, NAFTA-wide safety certification label acceptable to all three NAFTA nations.

ATA estimated the loss of direct annual revenue just from trailers prohibited from operating without certification labels would exceed $200 million.

FMCSA Response: FMCSA acknowledges the commenters' concerns. The withdrawal of the NPRM renders this issue moot.

Replacement Labels: Special and Rebuilt Vehicles

ATA, CTA, NTEA, and CVSA questioned how FMCSA would address the labeling of CMVs manufactured in two or more stages, noting that 49 CFR Part 568 requires labeling for these vehicles. ATA asserted consumer-performed repairs, such as replacing original tires with low-profile tires, ''invalidate portions of the certification label.''

TMA, ATA, and NTEA contended the proposed rule could eliminate the use of glider kits and service cabs (repair parts sold by truck manufacturers to repair a relatively new vehicle that suffered extensive body damage but has a salvageable engine, transmission, drive axles, or other major components). They reasoned a glider kit manufacturer cannot provide a certification label for a repaired vehicle based on the construction of the original vehicle, since it has no knowledge of the extent or quality of the repair.

Missouri CVED questioned how FMCSA would treat the labeling of homemade trailers or other equipment made by persons who are not manufacturers or equipment fabricators, noting the State of Missouri requires these vehicles to have a VIN affixed by the manufacturer. If a vehicle does not have a VIN, the Missouri Department of Revenue issues it a ''DRX'' plate and number.

FMCSA Response: As stated previously, by virtue of withdrawing the NPRM, we are retracting the proposed requirement for certification labels.

In response to the concern regarding the use of glider kits and service cabs, this matter is addressed in 49 CFR 571.7(e), Combining new and used components. If a glider kit or a service cab were used to replace an original cab that had been damaged beyond repair, and the cab were fitted with at least two of the three components (engine, transmission, drive axles) from another vehicle, the resulting vehicle would not be considered newly manufactured and its VIN would be the same as that of the vehicle used to provide at least two of the three components.

In response to Missouri CVED's comment concerning homemade trailers, the FMVSSs apply to every newly manufactured motor vehicle without exception.

With regard to State-assigned VINs, such as the ''DRX'' plate mentioned by Missouri CVED, the Vehicle Equipment Safety Commission (VESC) issued Regulation VESC–18 in August 1979, ''Standardized Replacement Vehicle Identification Number System.'' (The VESC no longer exists, but its materials are currently available through the American Association of Motor Vehicle Administrators of Arlington, Virginia.) Regulation VESC–18 serves as a model procedure for States to assure that all vehicles subject to title and/or registration are readily identifiable through verification of a manufacturer's VIN or State-issued VIN. A copy of Regulation VESC–18 is in the docket.

Roadside Inspections

CVSA requested FMCSA to report on the differences among U.S., Mexican, and Canadian vehicle equipment manufacturing standards for the benefit of manufacturers, registered importers, and roadside inspectors.

Advocates contended FMCSA would be unable to ensure motor carriers' compliance with the FMCSRs, and with those FMVSSs cross-referenced in the FMCSRs, in the absence of certification labels or documentation.

ATA questioned how enforcement officials at roadside could readily verify FMVSS compliance of a CMV manufactured in multiple stages. ATA also inquired how trailers entering the United States by rail or ship would be inspected, who would perform the inspections, and how nonconforming trailers would be handled.

Canada expressed concerns about potential enforcement activities by the U.S. Customs Service (now part of the Department of Homeland Security, under the Directorate of Border and Transportation Security) of vehicles-as-imports at the border, arguing these activities could paralyze cross-border operations and trade. Additionally, Canada feared the potentially chilling effect of heavy fines assessed for vehicles not properly labeled, pointing out this could prevent Canadian motor carriers from sending their CMVs into the United States.

FMCSA Response: NHTSA has evaluated the differences between the FMVSSs and CMVSSs applicable to heavy trucks and buses, and includes this analysis in its Notice of withdrawal of its policy statement on retroactive certification of CMVs by vehicle manufacturers, published elsewhere in today's **Federal Register**.

We recognize the concerns expressed by CVSA. However, Mexico has not established a comprehensive set of federal CMV manufacturing standards comparable to U.S. and Canadian standards, or based upon a statutory or regulatory scheme similar to those used in the United States and Canada. Therefore, any meaningful transnational comparison of manufacturing standards would be limited to the FMVSS and CMVSS. NHTSA and Transport Canada, as the regulatory agencies responsible for implementing and enforcing their respective nations' vehicle manufacturing safety laws, work together to research the causes and potential means of addressing deaths and injuries associated with motor vehicle crashes. As a result of the similar statutory schemes and the long-standing cooperative relationship between the two regulatory agencies, the FMVSS and CMVSS are similar in almost all substantive respects.

In response to ATA's comment concerning determination of FMVSS compliance of a vehicle manufactured in multiple stages, § 567.4 of NHTSA's regulations describes the manufacturer's responsibility for compliance labeling of the vehicle. Section 567.5 addresses the requirements for manufacturers of vehicles manufactured in two or more stages. These regulations were unaffected by NHTSA's and FMCSA's proposals.

In response to ATA's question on procedures for inspecting trailers entering the United States by rail (such as in trailer-on-flatcar service) or by ship (such as in intermodal containers), these trailers are subject to inspection by FMCSA or its State partners when operated on the highways. Trailers operating in the United States must meet applicable FMCSA regulations. Trailer inspections are performed by Federal and State enforcement officials using the North American Standard Inspection procedures required for all roadside CMV and driver inspections. Nonconforming trailers would be handled in the same way as other vehicle safety violations.

Canada's concerns about performance of inspections at border crossing areas

are moot, in light of withdrawal of the NPRM. Inspections at the U.S.-Canada border will be conducted, as at present, under the North American Standard Inspection procedure.

In response to Advocates' comment, all CMVs, as defined in 49 CFR 390.5 and operated in interstate commerce, are subject to the FMCSRs. The coding of the VIN, which must appear clearly and indelibly on all vehicles, includes a character indicating the model year. Table VI of 49 CFR Part 565 provides those codes for the years 1980 through 2013 (49 U.S.C. 30112 does not apply to vehicles over 25 years old). Given the full VIN code, the enforcement official can determine more precise manufacturing data, including the specific configurations of components and accessories used on a particular vehicle.

Phase-In Period

Greyhound strongly opposed the proposed 2-year phased-in compliance period for certain Mexico-domiciled carriers, contending bus manufacturers in Mexico were advised some years ago that vehicles operating in the United States must comply with the FMVSSs. ATU and TTD supported Greyhound's position. Advocates and Public Citizen also expressed strong opposition to the phased-in compliance period, believing it conflicted with the requirements of the Vehicle Safety Act. Public Citizen pointed to a list of FMVSSs with which CMVs must comply, including antilock brakes, rear impact guards, and brake slack adjusters. Advocates contended phased-in compliance ''would create a two-tiered safety regime for motor carriers * * * [and] provides a strong incentive for foreign motor carriers to operate equipment for up to two years without conforming to the FMVSS.''

AIA asserted the proposal for a phase-in period is not dictated or envisioned under international law. CHP also opposed the phased-in compliance period.

IBT asserted the border must remain closed until the FMCSA and NHTSA rulemakings are completed, and recommended the phase-in period for carriers already operating in the United States (U.S. and Canadian motor carriers as well as Mexican carriers currently operating beyond the border zones) be reduced to 12 months. IBT also recommended FMCSA clarify the rule text to prohibit carriers currently operating within the border commercial zones from taking advantage of the phase-in period if they applied to operate beyond the border zones.

FMCSA Response: Today's withdrawal of the NPRM renders moot the concept of a phase-in period.

Mexico-based motor carriers with current authority to operate in the United States have long been required [1] to comply with all applicable FMCSRs. Moreover, these vehicles are subject to, and many have undergone, roadside inspections while operating in the United States. The agency's NAFTA-related rules concerning applications for operating authority and safety monitoring require all Mexico-domiciled vehicles operating beyond the border commercial zones to display at all times a current and valid inspection decal for a period of 18 months after a carrier receives provisional operating authority and an additional 3 years after the carrier receives permanent authority. See 49 CFR 365.511 and 385.103. The inspection decal demonstrates the vehicle's compliance with FMVSSs cross-referenced in the FMCSRs, including all of the FMVSSs to which Public Citizen refers. Furthermore, the FMCSRs require motor carriers to maintain this safety equipment on their vehicles.

The roadside inspection procedure is the same for all CMVs operated in the United States, regardless of the motor carrier's country of domicile. In addition, as described above under *Safety of Vehicles Manufactured for the Mexican Market* (and in the FMCSA policy memorandum discussed there and in the *Background* section), if FMCSA or State inspectors determine that any Mexico-domiciled CMVs lack the proper certification, we may use this information to suspend or revoke the carrier's operating authority or certificate of registration for making a false certification or issue appropriate penalties for the falsification.

[1] Section 9102 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (title IX, subtitle B of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181, 4528) required the Secretary to exempt certain foreign motor carriers from part 393 of the FMCSRs, for a period of one year beginning on November 18, 1988. The Federal Highway Administration (FHWA), then the DOT agency responsible for motor carrier safety, addressed the requirements of the Act by publishing a final rule and request for comments on March 24, 1989 (54 FR 12200). In a report to Congress required under this legislation, FHWA recommended the part 393 exemption created by the Act be allowed to lapse, with the exception of a requirement for front-wheel brakes, and that Mexico-domiciled motor carriers operating in the border commercial zones be given until January 1, 1991, to comply with that standard. FHWA published a final rule on May 17, 1994 (59 FR 25572) requiring Mexico-domiciled CMVs operated in the United States to be equipped with brakes acting on all wheels.

As also described above in our discussion of the safety of Mexico-domiciled vehicles, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. The pre-authority audit will include inspection of available vehicles that have not received the necessary inspection decal. This inspection will include checking compliance with part 393 of the FMCSRs and the FMVSSs they cross-reference. For vehicles lacking a certification label, it has been determined that enforcement officials could, as necessary, refer to the VIN in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSS or CMVSS. If FMCSA determines the carrier, after having certified all its vehicles as compliant, plans to operate vehicles not complying with those motor vehicle safety standards in effect on the date of manufacture, we may use this information to deny operating authority to the carrier.

Because Mexico-domiciled motor carriers seeking new operating authority are required to certify on the application form that they operate only vehicles manufactured or retrofitted to be in compliance with the FMVSSs, these carriers should refrain from submitting applications for operating authority until they are able to ensure all vehicles to be operated in the United States are in compliance with the FMVSSs in effect on or after their date of manufacture. This requirement will be vigorously enforced, consistent with the agency's policy memorandum discussed previously.

FMCSA's withdrawal of its NPRM concerning certification labels does not relieve motor carriers of the responsibility to comply with all applicable FMCSRs, including those that cross-reference the FMVSSs. The FMCSRs apply equally to all motor carriers operating CMVs in interstate commerce in the United States. Canada- and Mexico-domiciled motor carriers must comply with the same safety regulations as U.S. carriers.

Out-of-Service Violations

TMA questioned whether FMCSA would place a vehicle out of service solely because it lacks an FMVSS certification label, since FMCSA did not explicitly include such a statement in its NPRM. Manitoba likewise was concerned CMVs could be impounded,

seized, or placed out of service for the absence of a certification label.

Advocates expressed a different view, contending without a certification label, ''there can be no presumption of affirmative compliance with the certification requirement * * * [This is] evidence that the vehicle was not properly certified and inspectors should place the vehicle out of service.''

In supplementary comments, CVSA stated a label does not, by itself, provide evidence of the vehicle's safety. CVSA considered it impractical to place a vehicle out of service solely because it lacks a certification label.

FMCSA Response: Since we are withdrawing the proposed certification label requirement, this issue is now moot. However, we addressed this subject in the preamble to the NPRM (67 FR 12782, at 12784, footnote 4), stating failure to have a certification label would not result in a vehicle's being placed out of service in the absence of vehicle defects meeting existing out-of-service criteria. The preamble to the NHTSA proposed policy statement (67 FR 12790, at 12792) also addressed this issue.

Other Vehicle Laws and Regulations

Greyhound urged FMCSA to coordinate with the Federal Transit Administration (FTA) and the Office of the Secretary of Transportation to ensure fixed-route service operations comply with the requirements of the Americans with Disabilities Act (ADA). (According to 49 CFR Part 37, Subpart H, all buses acquired for fixed-route service must be equipped with a wheelchair lift. Until 100 percent of the fleet is equipped, operators must provide wheelchair lift service on 48 hours' notice.)

Public Citizen recommended FMCSA issue embossed or bolted-on CMV certification markings to aid Federal and State enforcement officials in determining the legal status of each vehicle, and that border-commercial-zone-only trucks be ''visually distinguishable'' from those allowed to operate beyond the border zones.

FMCSA Response: In response to Greyhound's comment, DOT has a long-standing interpretation that Canada- or Mexico-based motor carriers are subject to ADA requirements if they pick up passengers in the United States. If a Mexico-based charter or tour operator boarded passengers in Mexico, drove them to a point in the United States, and then returned the passengers to Mexico without picking up anyone in the United States, the ADA requirements would not apply. However, the ADA requirements would apply if the Mexico-based tour operator boarded passengers in the United States, transported them to Mexico, and returned them to the United States. Likewise, if a Mexico-based fixed-route operation between points in Mexico and the United States picked up passengers at any point in the United States, ADA rules would apply.

If a passenger has a concern about the manner in which a provider of interstate highway passenger transportation complies with the ADA, he or she should contact the U.S. Department of Justice (Justice), Civil Rights Division, Disability Rights Section.[2] FMCSA will coordinate with Justice to ensure the concern is addressed. FTA's jurisdiction concerning ADA compliance extends only to its public-agency grantees.

With regard to Public Citizen's comment, CMVs operated by Mexico-domiciled motor carriers are issued a USDOT number with a suffix indicating whether they are authorized to operate within or beyond the border commercial zones. By regulation, these unique USDOT numbers are prominently displayed on both sides of the CMV.

FMCSA Decision

After review and analysis of the public comments discussed in the preceding section, and in consultation with NHTSA, FMCSA determined it can effectively ensure motor carriers' compliance with applicable FMVSSs through continued vigorous enforcement of the FMCSRs, coupled with measures detailed in our enforcement policy memorandum regarding Mexico-domiciled carriers and vehicles. These new enforcement measures will begin immediately. We will compile data regarding Mexico-domiciled vehicles falsely certified as FMVSS compliant on the motor carrier's application for operating authority and, when appropriate, take necessary action as described in the policy memorandum.

This approach will help ensure the safety of Mexico-domiciled CMVs in real-world, operational settings while eliminating the potential drawbacks associated with requiring commercial motor vehicles to display an FMVSS certification label, as identified by many of the commenters to the NPRM.

We again emphasize all motor carriers operating in the United States must comply with all applicable laws and regulations, including all of the FMCSRs as well as those that cross-reference particular FMVSSs. Through our cross-references to FMVSSs, we require motor carriers to ensure their CMVs are equipped with specific safety devices and systems required by NHTSA on newly manufactured vehicles, and to maintain their vehicles to ensure continued safe performance. The roadside inspection program will ensure this is the case to the greatest extent practicable.

In view of the foregoing, the NPRM concerning certification of compliance with the Federal Motor Vehicle Safety Standards is withdrawn.

Issued on: August 19, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–16967 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–EX–P

[2] 950 Pennsylvania Avenue, NW., Mail Code NYAV, Washington, DC 20530. Information is also available at *http://www.usdoj.gov/crt/drssec.htm.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 576 and 591

[Docket No. NHTSA–2005–22197]

RIN 2127–AI59, RIN 2127–AI60, RIN 2127–AI64

Retroactive Certification of Commercial Motor Vehicles by Motor Vehicle Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of withdrawal of proposed rulemakings and policy statement.

SUMMARY: This document completes NHTSA's consideration of its responsibilities to help implement the obligations of the United States under the North American Free Trade Agreement. The agency had proposed regulations to permit retroactive certification of foreign domiciled vehicles that, while built in compliance with U.S. standards applicable at the time of manufacture, had not been labelled as such. At the same time, the Federal Motor Carrier Safety Administration had proposed to require all commercial motor vehicles operating in the U.S. to have labels certifying compliance with the Federal motor vehicle safety standards (FMVSS).

After reviewing the comments on the NHTSA and FMCSA proposals, the Department has decided on a more effective and less cumbersome approach to ensuring that commercial motor vehicles were built to the FMVSS (or the very similar Canadian motor vehicle safety standards) and operate safely in the United States.

FMCSA requires Mexican-domiciled carriers applying to operate in the United States to certify in their applications that their vehicles were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built, and will confirm that certification during the pre-authority safety audit and subsequent inspections. In addition, enforcement through the Federal Motor Carrier Safety Regulations focuses on real world, operational safety and incorporates the various FMVSS applicable through the useful life of the vehicle.

FMCSA will not require vehicles to have labels certifying their compliance with the standards in effect when they were built, and NHTSA is not proceeding with a retroactive certification approach or the related proposal for a new recordkeeping and retention rule. We have also decided against placing a definition of the term ''import'' in the Code of Federal Regulations. After considering the comments, we have concluded that creating a new regulation to define the term serves no regulatory function and is unnecessary for the promotion of motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Julie Abraham, Director of the NHTSA International Policy, Fuel Economy and Consumer Program, at 202–366–0846.

For legal issues, you may call Edward Glancy of the NHTSA Office of Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Background

A. U.S. Moratorium on Operating Authority for Mexican-Domiciled Motor Carriers

Since 1982, a statutory moratorium on the issuance of operating authority to Mexican-domiciled motor carriers has, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border (''border zone''). Bus Regulatory Reform Act of 1982, Public Law No. 97–261, 96 Stat. 1102 (1982). The nearly blanket moratorium, which initially applied to both Mexican- and Canadian-domiciled motor carriers, was lifted against Canada pursuant to a memorandum from President Reagan to the United States Trade Representative published in the **Federal Register**. 47 FR 54053; December 1, 1982.

The memorandum was issued after the United States and Canada agreed, via an exchange of letters, to lift certain trade restrictions that were prohibiting the free flow of goods across the U.S.-Canadian border. Safety of the Canadian commercial motor vehicles was not identified as an area of concern in these letters.

B. NAFTA–U.S. Commitments and the Moratorium

Groundwork for lifting the moratorium as to Mexican-domiciled commercial motor vehicles was laid on December 17, 1992, when the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA or Agreement). Following approval by Congress, the Agreement entered into force on January 1, 1994. NAFTA establishes a free trade area, and its primary objectives are the promotion of free trade and investment through the elimination of trade barriers and the facilitation of cross-border movement of goods and services.

Annex I of NAFTA called for liberalization of access for Mexican-domiciled motor carriers on a phased schedule. Annex I: Reservations for Existing Measures and Liberalization Commitments, Schedule of the United States. Pursuant to this schedule, Mexican-domiciled charter and tour bus operations were to be permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

However, the United States postponed implementation with respect to Mexican-domiciled truck and scheduled bus service due to concerns about safety, continuing its blanket moratorium on processing applications by these Mexican-domiciled motor carriers for authority to operate in the United States outside the border zone.

On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA. NAFTA Panel Established Pursuant to Chapter Twenty in the Matter of Cross-Border Trucking Services Final Report (Feb. 6, 2001), 40 I.L.M. 772.

C. NAFTA-Related Actions by the Department of Transportation

The Department of Transportation is now preparing for the implementation of the NAFTA provisions concerning Mexican-domiciled motor carriers. The Department is adopting and implementing appropriate and effective safety measures as the United States takes the steps necessary to comply with its obligations under NAFTA regarding the access of Mexican-domiciled motor carriers engaged in interstate commerce to the United States.

As part of that effort, NHTSA has been examining the question of what role it should play under a statute originally known as the National Traffic and Motor Vehicle Safety Act. That statute has been codified at 49 U.S.C. 30101, *et seq.* (In the interest of simplicity, we will refer to that statute as the Vehicle Safety Act.) The purpose of the Vehicle Safety Act is to reduce the number of crashes and deaths and injuries resulting from crashes.

Pursuant to the Vehicle Safety Act, NHTSA issues Federal motor vehicle safety standards (FMVSSs) that apply to new motor vehicles that are manufactured for sale in the United States. The FMVSSs also apply, subject

to certain exemptions, to new or used motor vehicles imported into the United States. The Vehicle Safety Act requires manufacturers to certify that their vehicles, at the time of manufacture, comply with all applicable safety standards. 49 U.S.C. 30112. Each manufacturer must give evidence of this certification by affixing to its vehicles a permanent label stating that the manufacturer certifies that the vehicles comply with all applicable safety standards. 49 U.S.C. 30115.

In 1975, NHTSA interpreted this provision of section 30112 as applying to all vehicles entering the United States. In a letter from the NHTSA Administrator to the Canadian Trucking Association, the agency stated that Canadian commercial vehicles transporting cargo into and within the United States are imports within the context of 49 U.S.C. 30112 and must be certified.[1] Although the 1975 letter did not address the issue of Mexico-domiciled commercial motor vehicles, its rationale applied equally to those vehicles.

Following the decision of the NAFTA panel in February 2001, NHTSA reviewed its 1975 interpretation. On March 19, 2002, we proposed to define the term ''import'' in the Code of Federal Regulations in a manner consistent with the 1975 interpretation and sought comment on that interpretation of that term (67 FR 12806, Docket No. NHTSA–02–11593).

FMCSA also issued an NPRM on that date, proposing to require that all commercial motor vehicles operating in interstate commerce in the United States have labels certifying their compliance with the FMVSSs in effect when they were built (67 FR 12782, Docket No. FMCSA 01–10886). FMCSA is the agency within the Department of Transportation that is responsible for oversight of commercial motor carriers engaged in interstate commerce. Its regulations address both the commercial motor vehicles[2] (generally large trucks or passenger-carrying vehicles) operated in interstate commerce and drivers of those vehicles. The regulations also require commercial motor carriers, i.e., those businesses that engage in the transport of cargo or passengers, to meet specified operating requirements.

In conjunction with those two proposals, NHTSA issued a request for comments on a draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify that a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label to that effect (March 19, 2002, 67 FR 12790, Docket No. NHTSA 02–11594). To facilitate compliance further, FMCSA proposed a short-term exception from its proposed requirement, allowing a two-year grace period for carriers with existing operating authority to have their vehicles retroactively certified. New operators would have had to comply with the FMCSA requirement immediately. In addition, NHTSA issued an NPRM proposing recordkeeping requirements for manufacturers that retroactively certify their vehicles (March 19, 2002, 67 FR 12800, Docket No. NHTSA 02–11592).

The comment period for all four notices ended on May 20, 2002.

After careful consideration of the comments (which are discussed below) and also consistent with the actions being taken by FMCSA, we have decided to withdraw the three documents. The Department has developed a more effective and less cumbersome approach to ensure that commercial motor vehicles operating in the United States were originally built to the FMVSSs (or, as discussed below, the very similar Canadian motor vehicle safety standards (CMVSSs)) applicable at the time of their manufacture and operate safely in the U.S.

FMCSA, among other things, requires Mexican-domiciled carriers applying to operate in the United States to certify in their application that their vehicles were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built and will confirm that certification during the pre-authority safety audit and subsequent inspections.

FMCSA's enforcement program will ensure that commercial motor vehicles operating in the United States comply with all of the operating and maintenance regulations necessary for real world safety. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance standards (the FMVSS), and FMCSA's operating regulations incorporate the FMVSS critical to continued safe operation. As necessary, FMCSA's enforcement program may use VINs and other available information to check that commercial motor vehicles operating in the U.S. were originally built to the FMVSS or CMVSS applicable at the time of their manufacture.

FMCSA will not require vehicles to have labels certifying their compliance with the standards in effect when they were built, and is withdrawing its proposal on that subject. NHTSA is not proceeding with a retroactive certification approach or the related proposal for a new recordkeeping and retention rule. We have also decided against placing a definition of the term ''import'' in the Code of Federal Regulations. After considering the comments, we have concluded that creating a new regulation to define the term serves no regulatory function and is unnecessary for the promotion of motor vehicle safety.

II. Summary of Comments

A total of 79 comments, many of them duplicative, were received in the docket for the four rulemakings. Most of the comments addressed the FMCSA notice proposing that all commercial motor vehicles operating in the U.S. be certified and be labeled as certified. However, several of the commenters also addressed the implications of the proposed definition of the word ''import'' and its impact on the existing open U.S.-Canadian border and motor vehicle safety. Only a few commenters offered an opinion as to the validity of the interpretation on which the proposed definition of ''import'' was based.

Various trade organizations representing both motor carriers and truck manufacturers submitted comments generally opposed to the group of rulemakings. Representatives of the transit industry, labor organizations, vehicle insurers, and consumer groups filed comments that were generally supportive of the NPRM proposing to define ''import,'' but generally not supportive of the draft policy statement on retroactive certification or the proposed recordkeeping requirements. They were particularly concerned about the potential for fraud and abuse if retroactive certification were permitted. They were also opposed to the proposed grace period in the FMCSA rulemaking.

[1] See letter dated May 9, 1975 from NHTSA Administrator James B. Gregory to M. C. Carruth, Docket No. NHTSA–02–11593.

[2] A ''commercial vehicle'' is any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle: (1) Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR)—or a gross vehicle weight (GVW) or gross combination weight (GCW)—of 4,536 kilograms (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers, including the driver, for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, whether or not it is used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, Subtitle B, Chapter I, Subchapter C. See 49 CFR 390.5.

Additionally, the Canadian government, as well as two of its provinces, Manitoba, and Newfoundland and Labrador, filed submissions. While the Canadian authorities noted that they understood and supported the right of the U.S. to ensure the safety of its roads, they said that inspection and crash data showed that Canadian commercial vehicles are at least as safe as U.S. commercial vehicles. They argued that, in those circumstances, extending the certification requirements to the Canadian vehicles amounts to a technical trade barrier under the WTO and NAFTA.

Canada emphasized the substantial similarity between the CMVSSs and the FMVSSs, as well as the similarity between their underlying statute and ours (both of which are over 30 years old). The CMVSSs are intentionally harmonized with the FMVSSs to the maximum extent possible. The exceptions are generally limited to labeling requirements (metric, both French and English) and those instances in which the Canadian environment is unique (mandatory daytime running lights because of long periods of twilight in many parts of the country).

Industry representatives agreed with Canada's assessment, noting that like the U.S., Canada has a long history of comprehensive and substantially similar safety standards that govern the manufacture of motor vehicles, including commercial trucks. They said that, in some instances, the Canadian standards are arguably more stringent than the U.S. standards. The Truck Manufacturers Association (TMA) stated that, from a safety perspective, the two major areas of difference between U.S. and Canadian heavy vehicles are the effective dates for anti-lock brake systems (ABS) and automatic brake adjusters. It argued, however, that this lag time is of no practical consequence in view of the requirement at 49 CFR 393.55 of the Federal Motor Carrier Safety Regulations (FMCSRs) that all commercial motor vehicles operating in the U.S. be equipped with ABS and automatic brake adjusters that meet the requirements of FMVSS No. 105, Hydraulic and Electric Brake Systems, or FMVSS No. 121, Air Brake Systems.

Canada also observed that the U.S. and Canada have engaged in mutual acceptance of safety rules related to commercial motor carriers (*e.g.*, acceptance of commercial driver's license qualifications, vehicle inspection standards) since 1982, when the moratorium on issuing operating authority to Canadian-domiciled motor carriers was lifted. This system of mutual recognition has proven effective in maximizing cross-border trade, while ensuring that each country's legitimate safety concerns are sufficiently addressed.

The American Trucking Associations (ATA) argued that NHTSA should not interpret ''import'' to include the entrance of foreign commercial motor vehicles engaged in the transport of goods in the cross-border trade. It argued that this interpretation is inconsistent with the U.S. Customs classification of such vehicles as ''instruments of international commerce,'' instead of ''imports.'' The province of Newfoundland and Labrador argued that commercial vehicles that enter the U.S. for purpose of the carriage of goods or passengers should not be considered imports unless there is a change of ownership such that the vehicle can no longer be considered foreign-domiciled.

The Transportation Trades Department of the AFL-CIO (TTD), International Brotherhood of Teamsters (IBT), American Insurance Association (AIA), Public Citizen and Advocates for Highway and Auto Safety (Advocates) all believe NHTSA's 1975 interpretation of the import prohibition should be applied today, that it is based on ''unequivocal'' statutory language, and that it is needed to ensure the safety of our roadways. However, their comments and criticisms were limited to the impact of non-certified commercial motor vehicles coming into the United States from Mexico.

AIA pointed out that the NAFTA panel decision specifically allows for U.S. safety agencies to impose measures that guarantee the safe operation of trucks in the U.S., even if those measures impose limitations or requirements on Mexican-domiciled motor carriers that are not imposed on U.S.- or Canadian-domiciled carriers. It also noted that a lack of sufficient guarantees of safety, as a general rule, makes a class of business less insurable or increases the cost of coverage. The IBT argued that the application of vehicle safety requirements to Mexican carriers is consistent with the policy expressed by Congress in the Murray-Shelby legislation (section 350 of the 2002 DOT Appropriations Act, Pub. L. 107–87) regarding the importance of preventing unsafe commercial motor vehicles from entering the U.S.

The Amalgamated Transit Union (ATU) and Greyhound, as well as AIA, argued that all commercial motor vehicles should be required to have a sticker or plate (*i.e.*, a FMVSS certification label) before they are allowed to operate in the U.S., regardless of whether they have previously been allowed to operate in this country. They argued also that the grace period contemplated in the FMCSA proposal was inappropriate.

Various commenters claimed that the vast majority of Mexican-manufactured buses did not comply with the FMVSSs when originally manufactured, and do not comply now (particularly as to brakes, fuel systems, windows, and emergency exits). They also said that it is apparent from the FMCSA/NHTSA notices, when considered together, that many thousands of Mexican carriers have been traveling into the U.S. for many years without conforming to the U.S. safety standards. They argued that non-compliant commercial motor vehicles present a special safety hazard on U.S. roads, and non-compliant motor coaches, in particular, are especially dangerous for both bus passengers and other highway users. They believe the requirement that all vehicles display a valid FMVSS certification label would rectify this problem.

Advocates and AIA tentatively supported the concept of retroactive certification, although they expressed some concerns about the program, most notably the possibility of the issuance of mistaken, unsupported, or fraudulent certifications. They argued that the large population of ineligible Mexican vehicles would inevitably encourage the issuance of false certifications and the production of fraudulent labels. They also argued that the proposed policy statement does not provide sufficient safeguards to ensure that only those vehicles that, in fact, complied when originally manufactured (or are subsequently modified to achieve compliance) would actually be certified. Finally, they claimed that since Mexican manufacturers and carriers are unfamiliar with the FMVSSs, and there is no labeling requirement in Mexico, the only way to verify compliance of each Mexican-manufactured vehicle certified as conforming to the FMVSSs is to inspect each vehicle along with the documentation at the time of the pre-authorization safety audit. Without this initial, threshold confirmation of conformity with the FMVSSs, they argued, Mexican-domiciled motor carriers might certify their vehicles without any demonstrable proof of conformity.

III. NHTSA's Analysis of the Differences Between the FMVSSs and the CMVSSs

As noted by Canada in its comments, the FMVSSs and CMVSSs are issued under virtually identical statutes that were enacted over thirty years ago. The

two statutory schemes both require manufacturers to certify that their vehicles comply with all applicable safety standards in effect at the time of manufacture and employ similar enforcement schemes. Both sets of standards are performance based, based on research and data, and generally do not dictate a particular design, although they may have the effect of prohibiting certain designs. NHTSA and Transport Canada, the Canadian regulatory agency tasked with implementing and enforcing its vehicle safety act, work closely in researching the causes and potential means of addressing deaths and injuries related to motor vehicle crashes.

In 1984, the Department of Transportation and Transport Canada signed Addendum 5, Traffic and Motor Vehicle Safety Research (Addendum 5), to the existing Memorandum of Understanding between Transport Canada and the United States Department of Transportation Concerning Research and Development Cooperation in Transportation (June 18, 1970). Addendum 5 initially addressed cooperative research activities related to traffic safety research, crash avoidance research, crashworthiness research, and road safety data collection and analysis. The results of these research activities were often used to initiate rulemaking activities. In the 1996 version of Addendum 5, NHTSA and Transport Canada agreed to extend the cooperation agreement formally to the rulemaking activities of the United States and Canada. The two agencies also agreed to meet at least once a year to review the status of their respective rulemaking actions, alert the other to rules potentially of interest, and discuss near-term rulemaking plans. In 2002, NHTSA and Transport Canada concluded a revision to Addendum 4, which renewed the cooperation agreement indefinitely in order to ensure continuation of collaborative activities between the two departments. A copy of Addendum 5, including all updated versions, has been placed in the docket.

As a result of both the similar statutory schemes and the longstanding cooperative relationship between the two regulatory agencies, as well as the similarity in their physical environments and population, the FMVSSs and CMVSSs mirror each other in almost all substantive respects, especially as they apply to heavy trucks and buses.

NHTSA has evaluated the differences between the FMVSSs and the CMVSSs that apply to heavy trucks and buses (over 4,536 kg (10,000 lb) GVWR). We shared our analysis with Transport Canada, which provided additional feedback. Tables 1 and 2 in the appendix to this document generally outline the similarities and differences between the two sets of standards. We believe the efforts of both agencies have identified all of the significant differences between the two sets of standards as they apply to these vehicles.

As an initial matter, we note that this analysis is neither a tentative nor a final determination of functional equivalence. NHTSA has a formal process that allows for functional equivalence determinations with the consequence being a change in the standard that may be utilized by any manufacturer. Rather, today's analysis recognizes the tremendous similarity between the respective standards. In most instances, no amendment would be needed. The regulatory requirements already mirror each other. In some instances, minor differences exist and a series of minor changes to the FMVSS would be required in order for us to determine that the respective standards are functionally equivalent. We have decided against such an approach. Rather, we believe that the manufacture or retrofitting of vehicles in compliance with either the FMVSS or CMVSS ensures sufficient adequate design integrity to meet the safety concerns posed by the operation of commercial motor vehicles on the nation's highways as long as the vehicles also meet all FMCSRs.

Given the similarities between the two sets of standards and the existing manufacturer compliance practices, it is neither difficult nor impermissible for a commercial motor vehicle certified to the CMVSSs to meet the substantive requirements of the FMVSSs. We have identified 14 FMVSS/CMVSS pairs of standards that have differences. Most of these have only minor differences in performance values, with Canadian requirements that are at least as stringent as, and possibly stricter than, the corollary requirements in the FMVSSs. For example, one of the Canadian standards, CMVSS No. 301.1, has no U.S. counterpart, while another, CMVSS No. 301.2, has broader applicability than the corollary FMVSS Nos. 303 and 304.

The differences between Canadian standards and other U.S. standards like FMVSS Nos. 101, 105, and 121 relate solely to information on the instrument panel. These are designed to relay specific information to the vehicle operator and may be based on the customs and practices of the respective countries. We believe these differences do not have any consequence so long as the vehicle operator is familiar with the vehicle. Indeed, NHTSA and Transport Canada are involved in a harmonization effort that would eliminate most of these differences.

The remaining differences are not likely to pose safety problems. Portions of FMVSS No. 108 (reflective tape on trailers and allowance of European head lamps) and FMVSS Nos. 223 and 224 (underride prevention) have no Canadian counterpart. However, according to the CTEA, all Canadian trailers entering the United States already meet the applicable underride requirements of FMVSS Nos. 223 and 224 because of the underride requirements in the FMCSRs. Similarly, while CMVSS No. 108 allows single-colored reflective tape on trailers, the Canadian trailers used in the cross-border trade meet the requirements of FMVSS No. 108, in part because of the requirement in the FMCSRs that they do so. Finally, the TMA polled its Canadian members and has determined that no Canadian truck manufacturers are using European headlamps, even though the standard allows them. Communications submitted by CTEA documenting these statements have been placed in the docket.

As a result of our analysis, we have determined that allowing commercial motor vehicles certified to the Canadian motor vehicle safety standards rather than the U.S. motor vehicle safety standards to operate in the United States will have no negative safety consequences. Accordingly, requiring these vehicles to be certified twice, once to the CMVSSs and then secondarily to the FMVSSs, would impact U.S./Canada trade and impose requirements on the Canadian motor carriers, both in terms of cost and access to the U.S. market that cannot be justified.

IV. Impact of a Certification Requirement on Canadian- and Mexican-Domiciled Commercial Motor Carriers

A. Federal Motor Carrier Safety Regulations

The condition of safety equipment and features on commercial motor vehicles is governed by 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation. The Vehicle Safety Act, 49 U.S.C. 30103(a), specifically requires the FMCSRs be fully consistent with the FMVSSs. The provision does not require FMCSA to adopt all applicable FMVSSs as FMCSRs. However, if the item of equipment is regulated by the FMCSRs, then they must do so in a manner consistent with the FMVSSs. Section 30103(a) states:

The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter I of chapter 135 of this title [49 U.S.C. 13501 *et seq.*] that differs from a motor vehicle safety standard prescribed under this chapter [49 U.S.C. §§ 30101 *et seq.*]. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter I of chapter 135 [49 U.S.C. 13501 *et seq.*], a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

Because of the cross-reference in the Vehicle Safety Act to 49 U.S.C. 13501, *et seq.*, foreign-domiciled commercial motor vehicles engaged in interstate commerce are already subject to requirements based on most of the FMVSSs applicable to heavy trucks and buses. In most instances, the FMCSRs directly cross-reference the applicable portions of the FMVSSs that apply to the regulated vehicles. Further, the FMCSRs require that all motor carriers operating in the United States maintain much of the safety equipment and features that NHTSA requires vehicle manufacturers to install.

In the case of many manufacturing standards, for example where a compliance symbol is placed on the piece of equipment, a visual inspection is sufficient to verify compliance. With respect to other manufacturing standards, most notably the braking standards, a roadside inspection cannot tell the inspector whether the safety equipment, as originally manufactured, was effective enough to have actually complied with the applicable FMVSS. In these instances, however, the operating standard itself is designed to ensure that the motor vehicle is currently operating in a safe condition. Indeed, many of these types of standards involve aspects of motor vehicle performance that do not remain constant over the life of the vehicle. Thus, some FMCSRs address the current operational safety of components which wear over the life and use of the vehicle, while others cross-reference FMVSSs to ensure that required equipment is in place and maintained. In this way, the FMVSSs and FMCSRs comprise a consistent and mutually-supportive set of regulations, as intended by Congress in the Vehicle Safety Act.

B. Canadian-Domiciled Commercial Motor Vehicles

1. Volume of the U.S.-Canadian Cross-Border Trade

Canada and the U.S. have the largest bilateral trade relationship in the world, with the vast majority of goods exported from each country being carried via commercial motor vehicles (65% for Canada, 80% for U.S.). According to Canada, this trade generates 13 million truck trips across the U.S.-Canadian border annually, and represents more than 25% of the Canadian for-hire trucking revenues.

Industry representatives have proffered similar figures. According to the Canadian Trucking Association (CTA), the total merchandise trade between the U.S. and Canada is valued at almost $600 billion (2001 dollars). Typically about 70%, by value, of that trade is carried by truck, leading to more than 13 million truck trips across the U.S.-Canadian border. Trade by truck is crucial to maintaining shippers' just-in-time delivery schedules. CTA estimates that approximately 70,000 (out of 225,000) Canadian truck drivers enter the U.S. each year.

Canada contended that the proposed rules would make it impossible for many Canadian motor carriers to operate in the U.S. The small fleets and owner-operators (more than 50% of the Canadian carriers) would be the most substantially impacted.

2. Impact of the Proposed Rules on Canadian Motor Carriers

The Canadian fleets are not segregated into ''domestic'' or ''international'' equipment. Accordingly, the CTA argued that, from a practical standpoint, all Canadian vehicles would have to be retroactively certified and fitted with a FMVSS label in addition to the existing CMVSS label if the proposed labeling requirement were adopted. We agree that, if true, that would constitute a significant burden on the Canadian fleet.

TMA claimed that the vast majority of carriers that would seek retroactive certification under the proposed policy statement would be domiciled in Canada rather than Mexico. It noted that in 2000 there were approximately 700,000 heavy commercial motor vehicles (greater than 10,000 lb GVWR) registered in Canada. Since 87% of Canada's merchandise trade is with the U.S. and most of this merchandise is transported to the U.S. in commercial motor vehicles, a large portion of these 700,000 vehicles would need to be retroactively certified. According to TMA, retroactive certification for such a large number of vehicles would be both costly and time-consuming. Since these vehicles are already certified to the substantially similar CMVSSs and are already operating in the U.S. without a U.S. certification label, TMA argued that the increase in safety benefits that result from retroactive certification would be minimal at best.

TMA also noted that NHTSA, in proposing to place a definition of the term ''import'' in the CFR, did not offer any data indicating that the Canadian vehicles currently operating in the U.S. are unsafe. Accordingly, they suggested there is no safety need for the proposed regulation. Additionally, TMA and CTA argued that the most important influence on in-use vehicle safety is the level and quality of maintenance, driver performance, and the environment in which the vehicle is operated. The FMVSSs do not address the condition of a vehicle after it has been sold and put into service.

Canada also argued that complying with the certification requirements after-the-fact would be very difficult and costly, and, in many instances, impossible. Because the useful life of a commercial motor vehicle (particularly trailers) is well in excess of the Canadian 5-year record retention requirement, retroactive certification would, in many cases, be impossible. Additionally, many manufacturers have indicated to the Canadian government that they would not retroactively certify their vehicles. To the extent they were willing and able to retrofit these vehicles, they would pass the cost of certification onto the carrier. According to CTA, the cost of retroactive certification is impossible to determine. However, assuming the cost would be $1,000 per vehicle,[3] Canadian motor carriers would have to spend at least $250 million to comply with a FMVSS label requirement and would lose the valuable use of their vehicles while they are being certified.

3. Safety Record of Commercial Motor Vehicles Selected for Inspection

According to data collected by the FMCSA, concerning the out-of-service rates of commercial motor vehicles selected for roadside inspection in this country, Canadian commercial motor vehicles appear to have a lower out-of-service rate than do U.S.-domiciled commercial motor vehicles. These data are shown in the table below. It is

[3] CTA's cost estimate was premised on the following assumptions:

Each and every piece would have to be taken out of service for a period of time; returned to the manufacturer of deliverer to a registered importer; receive certification; and then returned to the vehicle fleet. Depending on the length of time required, the motor carrier may have to lease replacement equipment. Presumably manufacturers, and certainly registered importers, would charge a fee for service.

CTA further argued that ''since carriers do not segregate their fleet into 'domestic' and 'international' equipment, from a practical standpoint, all equipment in fleets with cross-boarder operations would fall under the proposed labeling requirements.''

important to note that the roadside inspection data are not statistically representative of all commercial motor vehicles, since States typically select commercial motor vehicles for inspection based upon the operating motor carrier's safety record, as well as indicators of potential safety problems noted when a vehicle enters an inspection facility. Thus, FMCSA and State inspectors focus their inspections on vehicles thought to have an above average likelihood of having safety problems. Further, the number of inspections performed on Mexico-domiciled commercial motor vehicles, particularly long-haul commercial motor vehicles, is a minute fraction of the total. Virtually all of the ''Mexico—all'' inspections were performed on short haul drayage operations during which Mexican-domiciled vehicles enter the U.S. not farther than the commercial zone along the border. Those vehicles are typically older than the Mexican-domiciled vehicles used in long haul operations.

OUT-OF-SERVICE RATES BY COUNTRY OF DOMICILE

	Total number of vehicle inspections	Vehicle inspections with a FMCSR violation	Vehicle inspections with an out-of-service violation	Percentage of total vehicle inspections with an out-of-service violation
FY 1999:				
All inspected vehicles	1,387,236	935,453	316,546	22.8
Canada	33,655	18,496	4,766	14.2
Mexico—long haul	19,695	17,362	8,165	41.5
Mexico—all	38,236	33,544	15,294	40.0
U.S.	1,315,345	883,413	296,486	22.5
FY 2000:				
All inspected vehicles	1,488,023	1,002,187	329,659	22.2
Canada	38,207	21,668	5,407	14.2
Mexico—long haul	23,275	19,900	8,948	38.4
Mexico—all	51,202	43,233	18,772	36.7
U.S.	1,398,614	937,286	305,480	21.8
FY 2001:				
All inspected vehicles	1,610,780	1,114,754	356,191	22.1
Canada	40,276	23,474	5,538	13.8
Mexico—long haul	25,175	21,569	9,046	35.9
Mexico—all	64,892	54,806	21,901	33.7
U.S.	1,505,612	1,036,474	328,752	21.8
FY 2002:				
All inspected vehicles	1,712,628	1,158,576	356,091	20.8
Canada	62,344	31,365	6,883	11.0
Mexico—long haul	27,702	23,484	8,557	30.9
Mexico—all	89,566	73,750	24,525	27.4
U.S.	1,560,718	1,053,461	324,683	20.8
FY 2003:				
All inspected vehicles	1,771,845	1,194,709	383,427	21.6
Canada	55,439	27,642	6,890	12.4
Mexico—long haul	29,052	23,952	7,375	25.4
Mexico—all	137,211	113,155	32,031	23.3
U.S.	1,579,195	1,053,912	344,506	21.8
FY 2004:				
All inspected vehicles	1,905,244	1,286,227	423,742	22.2
Canada	58,960	30,425	8,161	13.8
Mexico—long haul	12,799	9,452	3,079	24.1
Mexico—all	150,378	123,268	34,665	23.1
U.S.	1,695,906	1,132,534	380,916	22.5
FY 2005: *				
All inspected vehicles	912,693	619,794	177,988	19.5
Canada	27,092	14,313	3,243	12.0
Mexico—long haul	5,106	3,396	918	18.0
Mexico—all	88,159	71,560	15,367	17.4
U.S.	797,442	533,921	159,378	20.0

* Inspections through April 21, 2005.

C. Mexican-Domiciled Commercial Motor Vehicles

Our understanding is that the commercial motor vehicles manufactured in Mexico are produced either by subsidiaries of American companies such as Freightliner and International, or by the European-based company Scania. There are currently significant differences between the applicable manufacturing standards of the United States and the European Union. It is unlikely that a vehicle built by a European manufacturer to the European standards would have all the safety equipment needed to comply with either the FMCSRs or the FMVSSs.

However, according to information provided by the TMA, U.S. manufacturers or their affiliates provide the majority of the heavy trucks domiciled in Mexico.[4] According to the

[4] The rest are either produced by Scania or are built in two or more stages, with the chassis manufactured by a U.S. manufacturer and a

Continued

TMA,[5] U.S. manufacturers have been building their Mexican-domiciled vehicles in conformity with the FMVSSs since the mid to late 1990s, and over 50,000 U.S.-certified heavy trucks have been sold in the Mexican market since 1993. KenMex, a subsidiary of Paccar Inc., began affixing U.S. certification labels to all vehicles built for the Mexican market that met all applicable U.S. safety standards in that year. International, Freightliner, and Volvo began certifying most or all of their vehicles to the FMVSSs in 1996, 1997, and 1998, respectively. TMA estimates that approximately 4,500 additional heavy trucks produced by these manufacturers were built in accordance with then applicable U.S. safety standards, although not labeled as such.[6]

The information provided by TMA members provides sufficient assurance that a substantial number of Mexican-domiciled vehicles originally built to the Federal motor vehicle safety standards will be able to engage in cross-border trade between the U.S. and Mexico.

V. FMCSA's Enforcement Policy

After carefully reviewing the comments filed in response to the FMCSA and NHTSA proposals, including the potential for fraud that was noted in the proposals, the Department has developed a more effective approach for ensuring that commercial motor vehicles were built to the FMVSS (or the very similar Canadian motor vehicle safety standards) and operate safely in the United States. Rather than relying on retroactive labelling, FMCSA is continuing and reinforcing its program focused on operational safety requirements applicable to current conditions.

First, FMCSA requires Mexican-domiciled carriers applying to operate in the United States to certify in their applications that their vehicles were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built. False certification subjects the carrier to suspension or revocation of its license to operate in the United States. (49 CFR Part 365)

Second, enforcement through the Federal Motor Carrier Safety Regulations focuses on real world, operational safety and incorporates the various FMVSS applicable through the useful life of the vehicle.[7] FMCSA will continue to focus on assessing compliance with the FMCSRs, including those regulations that cross reference the FMVSSs (*e.g.*, lamps and reflectors, air brake systems [including antilock brake systems], rear impact guards on trailers, conspicuity treatments on truck tractors and trailers, emergency exits on buses, etc.).

Third, FMCSA may use Vehicle Identification Numbers (VINs) coupled with VIN information obtained from vehicle manufacturers, as well as other available information, when necessary to check whether vehicles were originally built to the FMVSSs.

We have concluded that the incorporation of numerous FMVSS into the FMCSRs, combined with the various certification and inspection procedures being adopted by FMCSA, will better ensure the operational safety of commercial motor vehicle on the public roads than a program of retroactive certification potentially fraught with fraud. Accordingly, we have determined that the regulatory scheme proposed in March 2002 would serve no meaningful safety function and are withdrawing the proposal for retroactive certification and record keeping.

VI. NHTSA's Interpretation of the Import Prohibition in the Vehicle Safety Act

In addition to proposing a regulatory scheme of retroactive labelling, the agency proposed including in the Code of Federal Regulations a definition of the word ''import'' based on a 1975 interpretive memo. The word ''import'' appears in 49 U.S.C. 30112, which prohibits a motor vehicle from being placed into interstate commerce or imported into the U.S. unless it is certified as complying with the FMVSS applicable at the time. NHTSA operates an extensive Registered Importer program to ensure that vehicles imported for sale and permanent use in the U.S. comply with this requirement. The question here is whether the word ''import,'' as used in this statute, necessarily applies to commercial motor vehicles that may be used temporarily in the United States and that are subject to an alternative regulatory program designed to ensure the vehicles operate safely on the U.S. roads.

After reviewing the various comments, all of which raised concerns regarding the practical application of the proposed definition of the term ''import'' as used in the Vehicle Safety Act, we decided to re-examine some of the basic assumptions made in the three documents that supported the agency's 1975 interpretation. We have delved more thoroughly into the language of the entire Vehicle Safety Act, as well as Congress' intent vis-á-vis the treatment of commercial motor vehicles under the Act. Additionally, we decided to reevaluate the existing case law relevant to the use of the term ''import'' outside of the context of tariff law to see whether and how other statutes define the term. Finally, we looked at additional factors and in additional contexts that were not considered in developing the 1975 interpretation. We believe the term ''import'' is subject to various interpretations, of which the agency's 1975 interpretation is but one. We do not believe it is the only reasonable interpretation. Accordingly, based on the comments we have received, and our research and evaluation, we have decided against adding a definition of the term in the Code of Federal Regulations, and we have decided to withdraw the agency's 1975 interpretation.

A. NHTSA's 1975 Interpretation

The proposed interpretive rule was based, in large part, on the analyses contained in the 1975 letter from NHTSA's Administrator, James Gregory, to the Canadian Trucking Association (1975 letter) and in an internal 1975 legal memorandum that preceded that letter. (The 1975 letter and memorandum were placed in the docket for the NPRM.) Both the 1975 letter and the legal memorandum concluded that entrances of Canadian-domiciled commercial motor vehicles into the United States were importations under the Vehicle Safety Act and were not subject to any exceptions under that Act. The letter was issued in response to a request by the Canadian Trucking Association that Canadian-domiciled commercial motor vehicles be excluded from the requirements of FMVSS No. 121, Air brake systems. At the time, Canada did not have a corollary standard.

Mexican final stage manufacturer completing the manufacturing process. It is doubtful that any of these vehicles would or could be certified to the FMVSSs.

[5] A letter from TMA providing a breakdown of the Mexican heavy truck market is in the docket. Docket NHTSA–2004–11593–22.

[6] We believe that the vast majority of Mexican-domiciled vehicles engaged in U.S. long haul traffic either carry the label or were originally built to then applicable U.S. standards. Those potentially not originally built to U.S. standards are generally used only in the short haul drayage operation within the commercial zone. As noted earlier, FMCSA and state inspections currently focus on these vehicles.

[7] We note that a label certifying compliance with performance standards applicable to lights, brakes and other wear items does not ensure real world safety in the absence of the FMCSRs, especially with regard to vehicles built many years ago. The American public is better protected by the FMCSRs than solely through a label indicating that a commercial motor vehicle had originally been built to certain manufacturing performance standards.

In concluding that Canadian vehicles were imports within the meaning of the Vehicle Safety Act, the agency interpreted the term ''import'' in the former section 108(a)(1) of the Act (now codified at 49 U.S.C. 30112(a)(1)) when read in conjunction with the exemptions provided in section 108(b)(4). Section 108(a)(1) stated that:

> No person shall manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this title unless it is in conformity with such standard except as provided in subsection (b) of this section.

Section 108(b)(3) stated that motor vehicles or equipment offered for importation in violation of section 108(a)(1) would be refused admission into the United States under joint regulations to be issued by the Secretary of Treasury and the Secretary of Commerce. Under an exception in section 108(b)(3), those regulations could authorize imports as long as the vehicles were subsequently brought into conformity with all applicable safety standards, but otherwise the vehicles would have to be exported or abandoned to the United States. The exception did not specify that the regulations only address those vehicles imported for sale or resale, although it is unlikely that anyone would so modify a vehicle unless it were to be permanently domiciled in the United States. Section 108(b)(4) authorized the issuance of joint regulations that would permit the temporary importation of used motor vehicles.[8]

The agency noted that the exceptions for non-complying imports in section 108(b)(3) of the Act and temporary importation of personal vehicles in section 108(b)(4) of the Act would not be needed if foreign-domiciled vehicles that were not sold in the United States were not considered imports under section 108(a). The language of the exceptions is the strongest evidence that Congress intended the term ''import'' to apply to all vehicles brought into the United States.

In our NPRM proposing the formal adoption of the 1975 interpretation, we relied on what we then believed was a ''plain meaning'' of the term when considered in conjunction with the overall purpose of the Vehicle Safety Act, relying exclusively on the analysis proffered in 1975. We did not revisit the original analysis of whether the Vehicle Safety Act was in fact akin to the statutes underlying the cases relied on in issuing the original interpretation, or whether other analyses might be more applicable.

B. Possible Alternative Interpretations of the Import Prohibition

The term ''import'' in a statute may be interpreted differently based upon the intent of Congress in using the term. When Congress does not specifically define a particular term, its meaning should be construed in such a way as to further the goals that Congress was seeking to achieve when enacting the law. See *Barnhart* v. *Walton*, 122 S. Ct. 1265,1270 (2002); *United States* v. *Haggar Apparel Co.*, 526 U.S. 380,392, 119 S. Ct. 1392, 1398 (1999), citing *Nations Bank of N.C.N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251, 257, 115 S. Ct. 810, 813–814 (1995). Congress' stated goal in enacting the Vehicle Safety Act was ''to reduce traffic accidents and deaths and injuries resulting from traffic accidents. 49 U.S.C. 30101.

The statute should not be viewed in isolation, but rather in conjunction with other, relevant statutes. See *Kokoszka* v. *Belford*, 417 U.S. 642, 650, 94 S.Ct. 2431, 2436 (1974), citing *Brown* v. *Duchesne*, 60 U.S. 183, 194 (1856). Commercial motor vehicles are subject to regulation under both the Vehicle Safety Act (codified as 49 U.S.C. Chapter 301, Motor Vehicle Safety) and 49 U.S.C. Chapter 311, Commercial Motor Vehicle Safety. One of the Congressionally stated purposes for Chapter 311, Subchapter III, Safety Regulation, is ''to promote the safe operation of commercial motor vehicles.'' 49 U.S.C. 31131(a). The Federal Motor Carrier Safety Administration implements this statute in large part through enforcement of the Federal Motor Carrier Safety Regulations.

In the NPRM, the agency referred to a dictionary definition of the word ''import,'' meaning ''to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, reexport or services'' (Random House Compact Unabridged Dictionary, Special Second Edition). The dictionary also defines the term as ''the act of importing or bringing in; importation, as of goods from abroad.'' Black's Law Dictionary also provides slightly differing definitions: ''a product brought into a country from a foreign country where it originated'' versus ''the process of bringing foreign goods into a country'' (Black's Law Dictionary, Seventh Edition, 1999).

1. Import—Illegal Goods Definition

Courts have broadly defined the term ''import'' in cases involving prohibited products that the government has seized. An example is *Cunard* v. *Mellon*, 262 U.S. 100 (1929), the case primarily relied upon by NHTSA in its 1975 analysis as supporting its ''plain language'' approach. The case addressed an interpretation of the National Prohibition Act, which prohibited the manufacture, sale and transportation, importation, and exportation of alcohol in or from any U.S. territory other than direct transport through the Panama Canal Zone. The statute was enacted in response to passage of the Eighteenth Amendment. The Court determined that the National Prohibition Act's criminal prohibition on bringing alcohol into the United States (including its territorial waters) required a broad definition of the term ''import'' as used in the statute, since such a reading ''better comports with the object to be attained,'' *i.e.*, the total ban on alcoholic beverages in the United States other than those liquors ''obtained before the act went into effect and kept in the owner's dwelling for use therein by him, his family, and his *bona fide* guests.''

Similar analysis can be found in more recent cases interpreting the criminal prohibition on ''importation'' of controlled substances (*e.g.*, heroin, morphine, and cocaine), where ''import'' is expressly and broadly defined by statute as ''any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).''[9] (21 U.S.C. 951 *et seq.*) (See generally, *U.S.* v. *Catano*, 553 F.2d 497 (5th Cir. 1975); *U.S.* v. *Lewis*, 676 F.2d 508 (11th Cir. 1982); and *U.S.* v. *Perez*, 776 F. 2d 759 (9th Cir. 1985).)

2. Import—Definition Used in Determining Whether an Item Brought Into the U.S. Is Subject to Tariff

Since 1926, courts have consistently held that in tariff cases, unless it clearly appears that Congress intended

[8] As explained in the House Report on the Act, the purpose of section 108(b)(4) was to ''accommodate foreign tourists who may bring their vehicles with them on visits to this country and also to permit import of certain vehicles for diplomatic use. H. Rep. 1776, 89th Cong., 2d Sess., p.24.

[9] See also, 16 U.S.C. 1151, *et seq.*, generally prohibiting importation, sale, or possession of North Pacific fur seal skins; 16 U.S.C. 1531, *et seq.*, generally prohibiting importation, sale, or possession of endangered fish and wildlife; and 16 U.S.C. 2401, *et seq.*, generally prohibiting importation, sale, or possession of birds, mammals, or plants native to Antarctica, where ''import'' is defined by statute as bringing into the jurisdiction of the United States, regardless of whether such act constitutes an importation within the meaning of customs law.

otherwise, the term ''importation'' means the bringing of goods within the jurisdictional limits of the U.S. with the intent to unlade. However, the courts have held that this definition is not literally applicable to a seagoing vessel or yacht entering the United States under its own power. Instead, they have given deference to a Treasury Department ruling cited in *Estate of Lev H. Prichard* v. *United States*, 43 CCPA 85, 87–88, CAD 612 (1956), which stated that ''if coming into this country temporarily as carriers of passengers or merchandise, they [vessels] are not subject to customs entry or the payment of duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.'' The court said that the question as to whether a vessel is brought into the United States ''permanently'' must be determined on the basis of intent. (See generally, *American Customs Brokerage Co., Inc.* v. *United States*, 375 F.Supp. 1360, 1366 (C.C.P.A., 1974).)

3. Import—Use of Tariff Definition in Non-Tariff Context

A third alternative is that contained in the Harmonized Tariff Schedule of the United States (HTSUS), even though the underlying statutory concern is not tariff-related. In 1999, the Environmental Protection Agency (EPA) took this approach in a final rule establishing an emission control program for certain new marine diesel engines pursuant to the Clean Air Act (64 FR 73300, December 29, 1999). The final rule is codified at 40 CFR Part 94. One of the issues addressed by the final rule was how the application to ''new marine engines'' would affect the engines on foreign vessels that were engaged in international trade. The EPA specified that, with respect to imported engines, ''new marine engine'' means an engine that is not covered by a certificate of conformity at the time of importation, and that was manufactured after the starting date of the emission standards which are applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States). It then specified prohibitions against certain acts by all persons with respect to the engines covered by the regulation.[10]

For the purposes of determining what constitutes an importation within the ''new marine engine'' definition, and consequently an importation under the prohibition, the EPA decided to adopt the approach contained in the HTSUS. Under the HTSUS, vessels used in international trade or commerce and personal pleasure craft brought into the territorial United States by non-residents are admitted without formal customs consumption entry or the payment of a duty. EPA said that its approach was consistent with the Treasury Department ruling cited in Prichard discussed above. (See discussion at 64 FR 73300, 73302.)[11]

C. Factors Not Considered in the 1975 Interpretation or NPRM

1. U.S. Customs Regulations in Effect in 1966

Neither the documents NHTSA relied upon when proposing an interpretive rule nor the preamble of that notice addressed the U.S. Customs regulations in effect when the Vehicle Safety Act was enacted. The 1963 Tariff Schedule specifically excluded commercial motor vehicles from entry requirements so long as the vehicles did not engage in local traffic in the United States.[12] This exclusion was adopted as part of the implementation of the Tariff Act of 1930, which provided that ''vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of customs laws to such extent and subject to terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.'' (19 U.S.C. 1322(a)). Because the foreign-domiciled commercial motor vehicles were not subject to entry under the existing Tariff Schedule when the Vehicle Safety Act was passed, any prohibition on allowing non-compliant commercial motor vehicles into the United States could not be enforced at the border without significantly amending those regulations in a manner inconsistent with the Tariff Act of 1930.[13]

2. Treatment of Canadian-Domiciled Commercial Motor Vehicles

None of the three previous NHTSA documents addressed the fact that throughout all the different legislative activities addressing vehicles brought into the United States, Canadian-domiciled commercial motor vehicles were allowed to operate in the cross-border trade without being subject to formal entry. In 1966, when the Vehicle Safety Act was enacted, both the Mexican and Canadian borders were open. In 1988, when Congress passed the Imported Vehicle Safety Compliance Act of 1988, the Canadian border was open. In 2001, when the Murray-Shelby provisions of the 2002 DOT Appropriations Act were enacted, the Canadian border was open.[14] None of the legislative histories of any of these statutes indicate intent on the part of Congress to change the operating status of the Canadian motor carriers, even though there was no basis to believe the foreign-domiciled commercial motor vehicles were fully compliant with the requirements of all applicable FMVSSs.

We have been unable to determine how many Mexican- and Canadian-domiciled motor carriers were operating in the trans-border trade when the Vehicle Safety Act was initially enacted, although the specific reference to these vehicles in the 1963 Tariff Schedule (28 FR 14663, December 31, 1963) indicates that at least some foreign-domiciled commercial motor vehicles were being used to transport cargo and passengers to and from the United States.

According to the statistics gathered by Transport Canada[15] regarding international carrier activities in 1984, a total of 941 Canadian motor carriers

[10] 40 CFR Part 94, Subpart I allows for some temporary importations with specified bond requirements (see 40 CFR 94.804).

[11] The Environmental Protection Agency (EPA) recently considered whether it should amend its interpretation of ''new marine engines'' to include engines in foreign-flag vessels, regardless of whether the presence of those vessels in U.S. ports would be treated as an import under HTSUS. Proposed rule; 67 FR 37548; May 29, 2002. It expressed concerns that the emissions of foreign-flagged commercial vessels may contribute significantly to problems in the U.S. since U.S.-flag vessels only account for 6.7% of all vessels entering U.S. ports. In the final rule, EPA did not decide whether it had the discretion to interpret new to include foreign vessels. It indicated that deferring this decision may help facilitate the adoption of more stringent consensus international standards, and noted that a new set of internationally negotiated marine diesel engine standards would apply to engines on all vessels, regardless of where they are flagged. Final rule; 68 FR 9746, 9759; February 28, 2003. In any event, the circumstances addressed by EPA, *i.e.*, the application or non-application of a solitary Federal regulatory program, are not closely analogous to those before this agency.

[12] The prohibition against engaging in local traffic was the result of cabotage laws in effect at the time. These laws were designed to prevent foreign carriers from engaging in the purely domestic transport of goods or passengers. Corollary laws applied to foreign-owned railroads, airlines and merchant vessels.

[13] U.S. Customs regulations currently provide that trucks, buses and other vehicles in international traffic shall be subject to the treatment specified in part 123 (19 CFR 10.41(a)), and that they may be admitted without formal entry or the payment of duty (19 CFR 123.14(a)).

[14] In 1988 and 2001, the Mexican border was open to Mexican-domiciled carriers operating only in the border zones and to such carriers that had obtained authority to operate beyond the border zones before the imposition of the 1982 moratorium.

[15] Statistics Canada, *Trucking in Canada, 1984*, Minister of Supply and Services Canada, 1986, table 2.7.

were engaged in the U.S.-Canada cross-border trade at that time. These carriers owned or operated, in the aggregate, 72,441 commercial motor vehicles. Thus, when Congress amended the Vehicle Safety Act in 1988 to address specifically concerns it had with the importation of non-compliant motor vehicles, the United States and Canada enjoyed an active trade relationship in which shipping via commercial motor vehicles clearly played a major role. Yet the legislative history associated with the 1988 amendments never raises the prospect that Congress was concerned about whether the Canadian commercial motor vehicles posed a safety risk while operating in the United States. Certainly Congress would have been aware that at least some percentage of goods imported to the United States from Canada were transported via truck, since President Reagan had lifted the Congressional moratorium on grants of new operating authority for Canadian carriers as recently as December 1982.

3. FY 2002 DOT Appropriations Act

Finally, as noted by the comments on this rulemaking, by 2001, when the provisions of the 2002 DOT Appropriations Act governing Mexican motor carriers were enacted, the United States and Canada enjoyed the largest trading relationship in the world, with most of the cargo coming into the United States via commercial motor vehicles that were not certified as compliant with the FMVSSs. Indeed, the concern over compliance with all applicable FMVSSs was not raised during the debates and hearings on the safety of Mexican commercial motor vehicles. Rather, Congress' stated concern was with the level of maintenance of the Mexican vehicles.

Based on consideration of both the factors addressed by the previous documents interpreting the term ''import,'' as well as the other factors articulated above, we have determined that the agency's previous interpretation of the importation restriction on non-certified foreign-domiciled commercial motor vehicles may be overly encompassing and place unreasonable restrictions on foreign-based motor carriers. Unlike statutes related to the regulation and control of narcotics, the Vehicle Safety Act does not require, or even allow, NHTSA to eliminate entirely the possibility of motor vehicle crashes in this country. While the agency was directed to establish motor vehicle safety standards, those standards must be practicable (both technically and financially) and must meet the need for motor vehicle safety (49 U.S.C. 30111). Additionally, the Vehicle Safety Act does not directly regulate used vehicles. The authority rests with the states, subject to the Vehicle-in-Use Inspection Standards (49 CFR Part 570). Likewise, while the Vehicle Safety Act prohibits motor vehicle repair businesses from making required safety equipment inoperative (49 U.S.C. 30122), it does not prohibit individuals from modifying their own vehicles in whatever manner they choose.

Additionally, unlike the narcotics laws, possession of non-compliant motor vehicles has never been illegal. Indeed, section 108(b), as originally enacted, provides for several circumstances under which the sale, delivery, introduction, or importation of non-compliant vehicles are not prohibited. As noted above, there is no prohibition against the sale, offer for sale, or introduction or delivery of non-compliant used motor vehicles. The prohibition does not apply to vehicles that are imported into the U.S. pursuant to joint regulations issued by Customs and NHTSA. Finally, it does not apply to vehicles labeled for export. The 1988 amendments further expanded the number of exceptions to the general prohibition by adding an exemption for vehicles that are at least 25 years old.

The NPRM was proposed to provide context to the proposals for retroactive certification and record keeping. These proposals did not consider whether, as we have learned through the benefit of notice and comment rulemaking, alternative approaches can better serve the nation's safety needs. The FMCSA's program of enforcing its on-the-road operational standards, combined with the processes it is establishing to check that vehicles were originally built to then applicable U.S. standards, satisfies the stated Congressional concern over the maintenance of Mexican trucks better than any program of retroactive labelling.

The NPRM proposing to add to the Code of Federal Regulations a definition of ''import'' relied heavily on the 1975 memo and added little analysis. We did not consider whether the overall regulatory scheme applicable to commercial motor vehicles would alter our conclusory statement about the purposes of the Vehicle Safety Act, nor whether it should affect our proclamation that such vehicles are equivalent to criminally illegal illicit drugs and contraband. The public comments we received have led us to review and consider more fully the underlying basis for the 1975 memo, and therefore the NPRM. Our more thorough and careful review leads us to conclude that the proposed definitional regulation does not adequately reflect the current regulatory environment and, in light of FMCSA's program to ensure operational safety, would provide no additional safety benefit. Accordingly, we have decided to withdraw the proposed definitional regulation.

We also believe it is important to note that while NHTSA issued its interpretation of the word ''import'' in 1975 in the context of addressing whether Canadian-domiciled commercial motor vehicles operating in the United States must meet the requirements of NHTSA's safety standard on air brake systems, as a practical matter NHTSA has never required vehicles with CMVSS labels to also carry FMVSS labels. Indeed, the comments indicate that the primary burdens associated with retroactive certification would fall on Canadian-domiciled commercial motor carriers, which have long been operating safely in the U.S. using commercial vehicles that were certified to the CMVSS and also met the FMCSRs.

In practice, NHTSA has generally sought to ensure that non-U.S.-domiciled commercial motor vehicles meet the same safety standards as U.S. vehicles (or very similar standards) by other means, especially working with FMCSA. We note, for example, that in responding to requests for interpretation in the late 1990's as to whether Canadian carriers can operate in the U.S. without the antilock brake systems required by NHTSA's safety standard, NHTSA's responses referred to the Federal motor carrier safety regulations rather than to our 1975 interpretation.[16] Also, NHTSA and Transport Canada have a close working relationship.

Thus, the approach discussed elsewhere in this document that the Department will be following for ensuring that commercial vehicles were built to the FMVSS (or the very similar CMVSS) and operate safely in the United States is consistent with our longstanding practices.

[16] See interpretation to Mr. Ted Reiniger, June 2, 1998; to Mr. Barrie Montague, June 1, 1998.

Appendix

TABLE 1.—COMPARISON OF CMVSS AND FMVSS REQUIREMENTS FOR TRUCKS AND BUSES OVER 4,536 KG (10,000 LB) GVWR

Title	CMVSS	FMVSS	Most stringent
CMVSS No. 101, Controls and displays. FMVSS No. 101, Controls and displays.	—Requires the ISO brake failure symbol if a common brake malfunction indicator is used.	—Requires the word ''brake'' with minimum height if a common brake malfunction indicator is used.	Safety difference is inconsequential.
CMVSS No. 102, Transmission control functions. FMVSS No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect.	No significant differences		Safety difference is inconsequential.
CMVSS No. 103, Windshield defrosting and defogging. FMVSS No. 103, Windshield defrosting and defogging systems.	No significant differences		Safety difference is inconsequential.
CMVSS No. 104, Windshield wiping and washing system. FMVSS No. 104, Windshield wiping and washing system.	No significant differences		Safety difference is inconsequential.
CMVSS No. 105, Hydraulic and electric brake systems. FMVSS No. 105, Hydraulic and electric brake systems.	—Requires statement to the same effect as U.S. for brake fluid reservoir labeling. —Requires the ISO ABS symbol for indicating ABS malfunction	—Requires specific working for brake fluid reservoir labeling. —Requires the word ''ABS'', ''Anti-lock'' or ''Antilock'' with minimum height for indicating ABS malfunction.	Safety differnce is inconsequential.
CMVSS No. 106, Brake hoses ..... FMVSS No. 106, Brake hoses.	No significant differences		Safety difference is inconsequential.
CMVSS No. 108, Lighting system and retro-reflective devices. FMVSS No. 108, Lamps, reflective devices, and associated equipment.	—Requires Daytime running lights —Allows European headlamps.	Allows, but does not require daytime running lights.	—CMVSS on daytime running lights. —Allowance of European headlamps is a significant difference.
CMVSS No. 111, Mirrors ..... FMVSS No. 111, Rearview mirrors.	No significant differences		Safety difference is inconsequential.
CMVSS No. 113, Hood latch system. FMVSS No. 113, Hood latch system.	No significant differences		Safety difference is inconsequential.
CMVSS No. 116, Hydraulic brake fluids. FMVSS No. 116, Motor vehicle brake fluids.	No significant differences		Safety difference is inconsequential.
CMVSS No. 119, Tires for vehicles other than passenger cars. FMVSS No. 119, New pneumatic tires for vehicles other than passenger cars.	Requires maple leaf certification marking.	Requires DOT marking	Saftey difference is inconsequential.
CMVSS No. 120, Tire selection and rims for vehicles other than passenger cars. FMVSS No. 120, Tire selection and rims for motor vehicles other than passenger cars.	No significant differences		Safety difference is inconsequential.

TABLE 1.—COMPARISON OF CMVSS AND FMVSS REQUIREMENTS FOR TRUCKS AND BUSES OVER 4,536 KG (10,000 LB) GVWR—Continued

Title	CMVSS	FMVSS	Most stringent
CMVSS No. 121, Air brake systems. FMVSS No. 121, Air brake systems.	Requires the ISO ABS symbol for indicating ABS malfunction.	Requires the letters ''ABS'' or ''Antilock'' with minimum height for indicating ABS malfunction.	Safety difference is inconsequential.
CMVSS No. 124, Accelerator control systems. FMVSS No. 124, Accelerator control systems.	No significant differences		Safety difference is inconsequential.
CMVSS No. 131, School bus pedestrian safety devices. FMVSS No. 131, School bus pedestrian safety devices.	No significant differences		Safety difference is inconsequential.
CMVSS No. 203, Driver impact protection. FMVSS No. 203, Impact protection for the driver from the steering control system.	Requirement that clothing and jewelry cannot catch on steering wheel.	Requirement that clothing and jewelry cannot catch on steering wheel does not apply to vehicles of this class.	CMVSS.
CMVSS No. 205, Glazing materials. FMVSS no. 205, Glazing materials.	References more recent version of ANSI Z26 test requirement, but allows older versions to be followed.	Only references older versions of ANSI Z26.	Safety difference is inconsequential.
CMVSS No. 207, Anchorage of seats. FMVSS No. 207, Seating systems.	All seats must be tested as an assembly of seat and seat base when installed in vehicle.	Allows separate testing of seating and seat base tested in a test fixture.	CMVSS.
CMVSS No. 208, Occupant protection in frontal impact. FMVSS No. 208, Occupant crash protection.	All vehicles must have seat belt ...	Allows for crash testing in lieu of seat belts in vehicles over 4,536 kg.	Safety difference is inconsequential.
CMVSS No. 209, Seat belt assemblies. FMVSS No. 209, Seat belt assemblies.	—Includes a colorfastness test .... —Requires label stating seat belt assembly must be installed in vehicle with an air bag if load limiters are used.	.....	Safety difference is inconsequential.
CMVSS No. 210, Seat belt assembly anchorages. FMVSS No. 210, Seat belt assembly anchorages.	Different requirements for seat belt anchorage location for adjustable seats with seat travel greater than 70 mm than for seats with seat travel equal to or less than 70 mm.	Provides an exemption from seat belt anchorage installation, strength, and location requirements if certified to unbelted barrier test in FMVSS No. 208.	Safety difference is inconsequential.
CMVSS No. 217, Bus window retention, release and emergency exits. FMVSS No. 217, Bus emergency exits and window retention and release.	Requires push-out windows on all buses other than school buses.	Requires either push-out windows or sliding windows.	Safety difference is inconsequential.
CMVSS No. 301.1—LPG Fuel system integrity.	.....	No FMVSS corollary	CMVSS.
CMVSS No. 301.2—CNG fuel system integrity. FMVSS No. 303, Fuel system integrity of compressed natural gas vehicles/FMVSS No. 304, compressed natural gas fuel container integrity.	—Applies to all vehicles ..... —Fuel container must remain attached to vehicle at minimum of one attachment point. —Adopts environmental testing requirements of CSA B51 or ANSI/AGA–NGV 2.	—Only regulated vehicles over 4,536 kg are school buses. —No environmental testing requirements.	CMVSS.
CMVSS No. 302, Flammability ..... FMVSS No. 302, Flammability of interior materials.	No significant differences		Safety difference is inconsequential.

TABLE 2.—COMPARISON OF CMVSS AND FMVSS REQUIREMENTS FOR TRUCKS TRAILER OVER 4,536 KG (10,000 LB) GVWR

Title	CMVSS	FMVSS	Most stringent
CMVSS No. 108, Lighting system and retro-reflective devices. FMVSS No. 108, Lamps, reflective devices, and associated equipment.	—Requires pole trailers to have reflective markings. —Allows colors of reflective tape other than red and white markings (*e.g.*, all white or all orange).	Requires red and white reflective tape.	—CMVSS on pole trailers. —FMVSS on reflective tape.
CMVSS No. 119, Tire for vehicles other than passenger cars. FMVSS No. 119, Tire for vehicles other than passenger cars.	Requires maple leaf certification marking.	Requires DOT marking	Safety difference is inconsequential.
CMVSS No. 120, Tire selection and rims for vehicles other than passenger cars. FMVSS No. 120, Tire selection and rims for motor vehicles other than passenger cars.	No significant differences.		Safety difference is inconsequential.
CMVSS No. 121, Air brake systems. FMVSS No. 121, Air brake systems.	No significant differences.		Safety difference is inconsequential.
FMVSS No. 223, Rear impact guards/FMVSS No. 224, Rear impact protection.	No CMVSS corollary.	Trailers must be equipped with rear impact guard having strength requirement of 100kN and 5.65 kJ of energy absorption on one side.	FMVSS

Issued on: August 22, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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Notices

Federal Register

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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

Animal and Plant Health Inspection Service

[Docket No. 05–065–1]

Fiscal Year 2006 Reimbursable Overtime Rates, Veterinary Diagnostic Services User Fees, and Agricultural Quarantine and Inspection User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to reimbursable overtime charged for Sunday, holiday, or other overtime work performed in connection with the inspection, laboratory testing, certification, or quarantine of certain articles, to user fees for certain veterinary diagnostic services, and to fees charged for agricultural quarantine and inspection services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The purpose of this notice is to remind the public of the reimbursable overtime charges and user fees for fiscal year 2006 (October 1, 2005, through September 30, 2006).

FOR FURTHER INFORMATION CONTACT: For information concerning reimbursable overtime charges related to Plant Protection and Quarantine program operations, contact Mr. Michael Caporaletti, Senior Program Analyst, Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5781.

For information concerning reimbursable overtime charges related to animal health programs and Veterinary Services import and export program operations, contact Dr. Lee Ann Thomas, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3277.

For information concerning veterinary diagnostic program operations, contact Dr. Randall Levings, Director, National Veterinary Services Laboratories, 1800 Daton Road, P.O. Box 844, Ames, IA 50010; (515) 663–7357.

For information concerning Agricultural Quarantine program operations, contact Mr. William E. Thomas, Assistant Director for Quarantine Policy, Analysis, and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–5214.

For information concerning user fee rate development, contact Mrs. Kris Caraher, Accountant, User Fees Section, Financial Systems and Services Branch, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Note: In March 2003, the agricultural import and entry inspection activities that had been performed by employees of the Animal and Plant Health Inspection Service (APHIS) were transferred to the Department of Homeland Security (DHS). Some of the regulations cited in this notice have not yet been updated to reflect this change, so in the interests of consistency with those regulations this notice continues to refer to ''APHIS employees'' and services provided or work performed by APHIS employees. Readers should be aware, however, that DHS personnel are currently performing certain of the agricultural import and entry inspection activities discussed in this notice for which overtime charges or user fees are applicable.

Reimbursable Overtime Charges

The regulations in 7 CFR chapter III and 9 CFR chapter I, subchapters D and G, require inspection, laboratory testing, certification, or quarantine of certain animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles intended for importation into, or exportation from, the United States. With some exceptions, when these services must be provided by an APHIS employee on a Sunday or on a holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges an hourly overtime fee for the services in accordance with 7 CFR part 354 and 9 CFR part 97.

In a final rule published in the **Federal Register** on July 25, 2002 (67 FR 48519–48525, Docket No. 00–087–2), and effective August 11, 2002, we established, for fiscal years 2002 through 2006 and beyond, reimbursable overtime rates for Sunday, holiday, or other overtime work performed by APHIS employees for any person, firm, or corporation having ownership, custody, or control of animals, poultry, animal byproducts, germ plasm, organisms, vectors, plants, plant products, or other regulated commodities or articles subject to inspection, laboratory testing, certification, or quarantine. In this document we are providing notice to the public of the reimbursable overtime fees for fiscal year 2006 (October 1, 2005, through September 30, 2006).

Under the regulations in 7 CFR 354.1(a) and 9 CFR 97.1(a), any person, firm, or corporation having ownership, custody or control of plants, plant products, animals, animal byproducts, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine who requires the services of an APHIS employee on a Sunday or holiday, or at any other time outside the regular tour of duty of that employee, shall sufficiently in advance of the period of Sunday, holiday, or overtime service request the APHIS inspector in charge to furnish the service during the overtime or Sunday or holiday period, and shall, beginning October 1, 2005, pay the Government at the rate listed in the following table:

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANTS, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS, OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour) beginning Oct. 1, 2005
Monday through Saturday and holidays	$51.00
Sundays	67.00

As specified in 7 CFR 354.1(a)(1)(iii) and 9 CFR 97.1(a)(3), the overtime rates to be charged beginning October 1, 2005, to owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of the aircraft, for work performed outside of the regularly established hours of service will be as follows:

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES[1]

Outside the employee's normal tour of duty	Overtime rates (per hour) beginning Oct. 1, 2005
Monday through Saturday and holidays	$41.00
Sundays	55.00

[1] These charges exclude administrative overhead costs.

A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or her, or which is performed by an employee on his or her regular workday beginning either at least 1 hour before his or her scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies may include a commuted traveltime period (see 7 CFR 354.1(a)(2) and 9 CFR 97.1(b)).

Veterinary Diagnostic Services User Fees

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services are contained in 9 CFR part 130 (referred to below as the regulations). These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (21 U.S.C. 136a), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable disease of livestock or poultry within the United States.

In a final rule published in the **Federal Register** on May 6, 2004 (68 FR 25305–25312, Docket No. 00–024–2), and effective June 7, 2004, we established, for fiscal years 2004 through 2007 and beyond, user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include: (1) Performing identification, serology, and pathobiology tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the National Veterinary Services Laboratories (NVSL) in Ames, IA; and (2) performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the NVSL Foreign Animal Disease Diagnostic Laboratory (NVSL FADDL) in Greenport, NY.

APHIS veterinary diagnostic user fees fall into six categories:

(1) Laboratory tests, reagents, and other veterinary diagnostic services performed at NVSL FADDL;

(2) Laboratory tests performed as part of isolation and identification testing at NVSL in Ames;

(3) Laboratory tests performed as part of serology testing at NVSL in Ames;

(4) Laboratory tests performed at the pathobiology laboratory at NVSL in Ames;

(5) Diagnostic reagents produced at NVSL in Ames or other authorized sites; and

(6) Other veterinary diagnostic services or materials provided at NVSL in Ames.

As specified in § 130.14(a), the user fees for diagnostic reagents provided by NVSL FADDL for fiscal year 2006 are as follows:

Reagent	Unit (mL)	User fee
Bovine antiserum, any agent	1	$160.00
Caprine antiserum, any agent	1	195.00
Cell culture antigen/microorganism	1	109.00
Equine antiserum, any agent	1	198.00
Fluorescent antibody conjugate	1	176.00
Guinea pig antiserum, any agent	1	194.00
Monoclonal antibody	1	235.00
Ovine antiserum, any agent	1	187.00
Porcine antiserum, any agent	1	162.00
Rabbit antiserum, any agent	1	190.00

As specified in § 130.14(b), the user fees for veterinary diagnostic tests performed at NVSL FADDL for fiscal year 2006 are as follows:

Test	Unit	User fee
Agar gel immunodiffusion	Test	$32.00
Card	Test	18.00
Complement fixation	Test	38.00
Direct immunofluorescent antibody	Test	24.00
Enzyme linked immunosorbent assay	Test	28.00
Fluorescent antibody neutralization (classical swine fever)	Test	208.00
Hemagglutination inhibition	Test	61.00
Immunoperoxidase	Test	31.00
Indirect fluorescent antibody	Test	37.00
In-vitro safety	Test	609.00
In-vivo safety	Test	5,447.00
Latex agglutination	Test	25.00
Tube agglutination	Test	29.00
Virus isolation (oesophageal/pharyngeal)	Test	192.00
Virus isolation in embryonated eggs	Test	370.00
Virus isolation, other	Test	166.00
Virus neutralization	Test	56.00

As specified in § 130.14(c), the user fees for other veterinary diagnostic services performed at NVSL FADDL for fiscal year 2006 are as follows:

Veterinary diagnostic service	Unit	User fee
Bacterial isolation	Test	$119.00
Hourly user fee services[1]	Hour	476.00
Hourly user fee services—Quarter hour	Quarter hour	119.00
Infected cells on chamber slides or plates	Slide	51.00
Reference animal tissues for immunohistochemistry	Set	182.00
Sterilization by gamma radiation	Can	1,860.00
Training (school or technical assistance)	Per person per day	973.00
Virus titration	Test	119.00

[1] For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

As specified in § 130.15(a), the user fees for bacteriology isolation and identification tests performed at NVSL (excluding FADDL) or other authorized sites for fiscal year 2006 are as follows:

Test	Unit	User fee
Bacterial identification, automated	Isolate	$51.00
Bacterial identification, non-automated	Isolate	87.00
Bacterial isolation	Sample	35.00
Bacterial serotyping, all other	Isolate	53.00
Bacterial serotyping, Pasteurella multocida	Isolate	18.00
Bacterial serotyping, Salmonella	Isolate	35.00
Bacterial toxin typing	Isolate	116.00
Bacteriology requiring special characterization	Test	89.00
DNA fingerprinting	Test	58.00
DNA/RNA probe	Test	81.00
Fluorescent antibody	Test	18.00
Mycobacterium identification (biochemical)	Isolate	111.00
Mycobacterium identification (gas chromatography)	Procedure	93.00
Mycobacterium isolation, animal inoculations	Submission	814.00
Mycobacterium isolation, all other	Submission	146.00
Mycobacterium paratuberculosis isolation	Submission	70.00
Phage typing, all other	Isolate	41.00
Phage typing, Salmonella enteritidis	Isolate	23.00

As specified in § 130.15(b), the user fees for virology identification tests performed at NVSL (excluding FADDL) or other authorized sites for fiscal year 2006 are as follows:

Test	Unit	User fee
Fluorescent antibody tissue section	Test	$28.00
Virus isolation	Test	46.00

As specified in § 130.16(a), the user fees for bacteriology serology tests performed at NVSL (excluding FADDL) or other authorized sites for fiscal year 2006 are as follows:

Test	Unit	User fee
Brucella ring (BRT)	Test	$35.00
Brucella ring, heat inactivated (HIRT)	Test	35.00
Brucella ring, serial (Serial BRT)	Test	53.00
Buffered acidified plate antigen presumptive	Test	7.00
Card	Test	4.00
Complement fixation	Test	16.00
Enzyme linked immunosorbent assay	Test	16.00
Indirect fluorescent antibody	Test	14.00
Microscopic agglutination—includes up to 5 serovars	Sample	23.00
Microscopic agglutination—each serovar in excess of 5 serovars	Sample	4.00
Particle concentration fluorescent immunoassay (PCFIA)	Test	35.00
Plate	Test	7.00
Rapid automated presumptive	Test	6.00
Rivanol	Test	7.00
Tube agglutination	Test	7.00

As specified in § 130.16(b), the user fees for virology serology tests performed at NVSL (excluding FADDL) or at authorized sites for fiscal year 2006 are as follows:

Test	Unit	User fee
Agar gel immunodiffusion	Test	$16.00
Complement fixation	Test	A16.00
Enzyme linked immunosorbent assay	Test	16.00
Hemagglutination inhibition	Test	14.00
Indirect fluorescent antibody	Test	14.00
Latex agglutination	Test	16.00
Peroxidase linked antibody	Test	15.00
Plaque reduction neutralization	Test	17.00
Rabies fluorescent antibody neutralization	Test	44.00
Virus neutralization	Test	13.00

As specified in § 130.17(a), the user fees for veterinary diagnostic tests performed at the Pathobiology Laboratory at NVSL (excluding FADDL) or at authorized sites for fiscal year 2006 are as follows:

Test	Unit	User fee
Aflatoxin quantitation	Test	$29.00
Aflatoxin screen	Test	28.00
Agar gel immunodiffusion spp. identification	Test	12.00
Antibiotic (bioautography) quantitation	Test	63.00
Antibiotic (bioautography) screen	Test	115.00
Antibiotic inhibition	Test	63.00
Arsenic	Test	17.00
Ergot alkaloid screen	Test	63.00
Ergot alkaloid confirmation	Test	83.00
Feed microscopy	Test	63.00
Fumonisin only	Test	36.00
Gossypol	Test	95.00
Mercury	Test	140.00
Metals screen	Test	43.00
Metals single element confirmation	Test	12.00
Mycotoxin: aflatoxin—liver	Test	115.00
Mycotoxin screen	Test	46.00
Nitrate/nitrite	Test	63.00
Organic compound confirmation	Test	85.00
Organic compound screen	Test	146.00
Parasitology	Test	28.00

Test	Unit	User fee
Pesticide quantitation	Test	128.00
Pesticide screen	Test	58.00
pH	Test	26.00
Plate cylinder	Test	95.00
Selenium	Test	43.00
Silicate/carbonate disinfectant	Test	63.00
Temperature disks	Test	126.00
Toxicant quantitation, other	Test	106.00
Toxicant screen, other	Test	32.00
Vomitoxin only	Test	51.00
Water activity	Test	32.00
Zearaleone quantitation	Test	51.00
Zearaleone screen	Test	28.00

As specified in § 130.18(a), the user fees for bacteriology reagents produced by the Diagnostic Bacteriology Laboratory at NVSL (excluding FADDL) or other authorized sites for fiscal year 2006 are as follows:

Reagent	Unit	User fee
Anaplasma card test antigen	2 mL	$92.00
Anaplasma card test kit without antigen	Kit	123.00
Anaplasma CF antigen	2 mL	46.00
Anaplasma stabilate	4.5 mL	170.00
Avian origin bacterial antiserums	1 mL	46.00
Bacterial agglutinating antigens other than brucella and salmonella pullorum	5 mL	52.00
Bacterial conjugates	1 mL	93.00
Bacterial disease CF antigens, all other	1 mL	28.00
Bacterial ELISA antigens	1 mL	28.00
Bacterial or protozoal, antiserums, all other	1 mL	58.00
Bacterial reagent culture [1]	Culture	70.00
Bacterial reference culture [2]	Culture	221.00
Bacteriophage reference culture	Culture	166.00
Bovine serum factor	1 mL	17.00
Brucella abortus CF antigen	60 mL	146.00
Brucella agglutination antigens, all other	60 mL	146.00
Brucella buffered plate antigen	60 mL	166.00
Brucella canis tube antigen	25 mL	107.00
Brucella card test antigen (packaged)	Package	87.00
Brucella card test kit without antigen	Kit	111.00
Brucella cells	Gram	18.00
Brucella cells, dried	Pellet	5.00
Brucella ring test antigen	60 mL	233.00
Brucella rivanol solution	60 mL	28.00
Dourine CF antigen	1 mL	86.00
Dourine stabilate	4.5 mL	107.00
Equine and bovine origin babesia species antiserums	1 mL	123.00
Equine negative control CF antigen	1 mL	276.00
Flazo-orange	3 mL	12.00
Glanders CF antigen	1 mL	75.00
Hemoparasitic disease CF antigens, all other	1 mL	522.00
Leptospira transport medium	10 mL	4.00
Monoclonal antibody	1 mL	93.00
Mycobacterium spp. old tuberculin	1 mL	23.00
Mycobacterium spp. PPD	1 mL	18.00
Mycoplasma hemagglutination antigens	5 mL	174.00
Negative control serums	1 mL	18.00
Rabbit origin bacterial antiserum	1 mL	50.00
Salmonella pullorum microagglutination antigen	5 mL	15.00
Stabilates, all other	4.5 mL	659.00

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.

[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

As specified in § 130.18(b), the user fees for virology reagents produced by the Diagnostic Virology Laboratory at NVSL (excluding FADDL) or at authorized sites for fiscal year 2006 are as follows:

Reagent	Unit	User fee
Antigen, except avian influenza and chlamydia psittaci antigens, any	2 mL	$59.00

Reagent	Unit	User fee
Avian antiserum except avian influenza antiserum, any	2 mL	47.00
Avian influenza antigen, any	2 mL	32.00
Avian influenza antiserum, any	6 mL	100.00
Bovine or ovine serum, any	2 mL	23.00
Cell culture	Flask	146.00
Chlamydia psittaci spp. of origin monoclonal antibody panel	Panel	93.00
Conjugate, any	1 mL	71.00
Diluted positive control serum, any	2 mL	24.00
Equine antiserum, any	2 mL	44.00
Monoclonal antibody	1 mL	99.00
Other spp. antiserum, any	1 mL	52.00
Porcine antiserum, any	2 mL	102.00
Porcine tissue sets	Tissue set	155.00
Positive control tissues, all	2 cm^2 section	58.00
Rabbit origin antiserum	1 mL	50.00
Reference virus, any	0.6 mL	174.00
Viruses (except reference viruses), chlamydia psittaci agent or chlamydia psittaci antigen, any	0.6 mL	29.00

As specified in § 130.19(a), the user fees for other veterinary diagnostic services or materials available from NVSL (excluding FADDL) for fiscal year 2006 are as follows:

Service	Unit	User fee
Antimicrobial susceptibility test	Isolate	$101.00
Avian safety test	Test	3,972.00
Check tests, culture	Kit[1]	171.00
Check tests, serology, all other	Kit[1]	349.00
Fetal bovine serum safety test	Verification	1,096.00
Hourly user fee services: [2]		
Hour	Hour	84.00
Quarter hour	Quarter hour	21.00
Minimum		25.00
Manual, brucellosis culture	1 copy	111.00
Manual, tuberculosis culture (English or Spanish)	1 copy	166.00
Manual, Veterinary mycology	1 copy	166.00
Manuals or standard operating procedure (SOP), all other	1 copy	33.00
Manuals or SOP, per page	1 page	2.00
Training (school or technical assistance)	Per person per day.	320.00

[1] Any reagents required for the check test will be charged separately.
[2] For veterinary diagnostic services for which there is no flat rate user fee the hourly rate user fee will be calculated for the actual time required to provide the service.

Agricultural Quarantine and Inspection Services User Fees

User fees to reimburse APHIS for the costs of providing inspections of certain commercial conveyances are found in 7 CFR part 354 (referred to below as the regulations). These user fees are authorized by Section 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a), which authorizes APHIS to collect user fees for agricultural quarantine and inspection (AQI) services.

In a final rule published in the **Federal Register** on December 9, 2004 (69 FR 71660–71683, Docket No. 04–042–1), and effective January 1, 2005, we established, for fiscal years 2005 through 2010 and beyond, user fees for each of the types of conveyances or persons to whom AQI services are provided, *i.e.*, commercial vessels (watercraft), commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers. The regulations provide specific information regarding the applicability of, and exceptions to, AQI user fees. As specified in 7 CFR 354.3, the user fees for these AQI services for fiscal year 2006 are as follows:

Service	Unit	Amount
Inspection of commercial vessels of 100 net tons or more (see 7 CFR 354.3(b))	Per entry [1]	$488.00
Inspection of commercial trucks (see 7 CFR 354.3(c))	Per entry [2]	5.25
Inspection of commercial railroad cars (see 7 CFR 354.3(d))	Per entry [3]	7.50
Inspection of commercial aircraft (see 7 CFR 354.3(e))	Per entry	70.25
Inspection of international aircraft passengers (see 7 CFR 354.3(f))	Per entry	5.00

[1] Not to exceed 15 payments in a calendar year (*i.e.*, no additional fee will be charged for a 16th or subsequent arrival in a calendar year).
[2] A prepaid AQI permit valid for 1 calendar year may be obtained for an amount 20 times the AQI user fee for each arrival ($105.00 from October 1, 2005 through September 30, 2005).

[3] The AQI user fee may be prepaid for all arrivals of a commercial railroad car during a calendar year for an amount 20 times the AQI user fee for each arrival ($150.00 from October 1, 2005 through September 30, 2006).

Done in Washington, DC, this 22nd day of August 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–16982 Filed 8–25–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic National Forest, Jefferson County, Washington; Dosewallips Road Washout Project

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of intent to prepare an environmental impact statement.

SUMMARY: On August 12, 2005, the USDA, Forest Service, Olympic National Forest, published a Notice of Intent in **Federal Register** (70 FR 47171) to prepare an environmental impact statement (EIS) for Dosewallips Road Washout Project. The Notice of Intent is being revised to correct the project's location from Oregon State to Washington State, and to correct the Olympic National Park e-mail contact address. The correct address is *olym_ea@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Tim Davis, Project Team Leader, Olympic National Forest, 1835 Black Lake Blvd. SW., Suite A, Olympia, WA 98512; phone (360) 956–2375; or e-mail *tedavis@fs.fed.us.* For information on the National Park Service component of the project, contact Nancy Hendricks, Environmental Protection Specialist, 600 East Park Ave., Port Angeles, WA 98362; phone (360) 565–3008; or e-mail *olym_ea@nps.gov.*

Dated: August 19, 2005.

Virginia Grilley,

Acting Forest Supervisor, Olympic National Forest.

[FR Doc. 05–16984 Filed 8–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Black-Tailed Prairie Dog Conservation and Management Nebraska National Forest, and Oglala National Grassland—Nebraska Buffalo Gap, and Fort Pierre National Grasslands—SD

AGENCY: USDA Forest Service.

ACTION: Notice of decision.

On August 3, 2005, Donald J. Bright (Responsible Official), Forest Supervisor of the Nebraska National Forest and Associated Units, signed the Record of Decision (ROD) to implement Alternative 3 of the Black-tailed Prairie Dog Conservation and Management Environmental Impact Statement (EIS).

In summary, Alternative 3 provides for maintaining sufficient prairie dog colonies to ensure population viability for prairie dogs and other species dependent upon the prairie dog ecosystem, including the endangered black-footed ferret. At the same time, it redeems the responsibility of the Forest Service to act as a good neighbor and reduce the effects of land management decisions on adjoining landowners.

This alternative prescribes an adaptive management concept using a full suite of tools, including expanded rodenticide use and vegetation management, through livestock grazing coordination, to manage and reduce selected prairie dog colonies along national grassland property boundaries. The purpose of this action is to reduce or eliminate unwanted movement to, and colonization of, private and tribal lands by black-tailed prairie dogs originating on the adjacent national grasslands listed above.

The Record of Decision are available at the Nebraska National Forest Web site at *http://www.fs.fed.us/r2/nebraska/projects.* It is also available on CD at the Nebraska National Forest Supervisor's Office at 125 N. Main St., Chadron, NE 69337, or by calling (308) 432–0300.

Individuals or organizations submitting substantive comments during the comment period (36 CFR 215.6) are eligible to appeal the decision pursuant to 26 CFR part 215 (**Federal Register**—June 4, 2003) or 26 CFR 251 subpart C (FR—January 23, 1989), but not both. Appeals, including attachments, must be filed with the Appeal Deciding Officer within 45 days following the date of publication of the legal notice in the official newspapers of record, Rapid City Journal, Rapid City, South Dakota and the Omaha World Herald, Omaha, Nebraska for Nebraska National Forest Supervisor decisions in South Dakota and Nebraska respectively. The legal notice is the exclusive means for calculating the time to file an appeal. Those wishing to file an appeal should not rely upon dates or timeframe information provided by any other source. It is the responsibility of individuals wishing to file an appeal to do so within the framework provided in the appropriate appeal regulations. These regulations may be found at the following Web site: *http://www.fs.fed.us/emc/applit/appeals.htm.*

Dated: August 18, 2005.

Donald J. Bright,

Forest Supervisor, Nebraska National Forest.

[FR Doc. 05–16977 Filed 8–25–05; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: Effective September 25, 2005.

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: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On June 17, June 24 and July 1, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (70 FR 35223, 36561, and 38099) 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 products 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.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the government.

2. The action will result in authorizing small entities to furnish the products 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 products 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

Mop, Deck, Cotton, Blue & Refill
NSN: M.R. 1068—Blue Cotton Deck Mop Refill
NSN: M.R. 1067—Blue Cotton Deck Mop
NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Services

Service Type/Location: Custodial Services, Philadelphia Naval Business Center, Engineering Field Activity Northeast, 4903 S. Broad Street, Philadelphia, Pennsylvania.
NPA: Elwyn, Inc., Aston, Pennsylvania.
Contracting Activity: Naval Facilities Engineering Command/Northern Division, Philadelphia, Pennsylvania.
Service Type/Location: Food Service Attendant, Naval Construction Battalion Center, Building 1050, Gulfport, Mississippi.
NPA: Lakeview Center, Inc., Pensacola, Florida.
Contracting Activity: Fleet and Industrial Supply Center, Jacksonville, Florida.
Service Type/Location: Laundry Service, Health & Human Services Supply Center, Perry Point, Maryland.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
Contracting Activity: Health & Human Services, Program Support Center, Perry Point, Maryland.

Deletion

On July 1, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 38099) of proposed deletion to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product 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 deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Pen, Ballpoint, Stealth Writer
NSN: 7520–01–439–3396—Pen, Ballpoint, Stealth Writer
NSN: 7520–01–439–3401—Pen, Ballpoint, Stealth Writer
NSN: 7520–01–439–3402—Pen, Ballpoint, Stealth Writer
NSN: 7520–01–439–3405—Pen, Ballpoint, Stealth Writer
NSN: 7520–01–439–3406—Pen, Ballpoint, Stealth Writer
NSN: 7520–01–439–3395—Pen, Ballpoint, Stealth Writer
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–4674 Filed 8–25–05; 8:45 am]

BILLING CODE 6353–01–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 deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agencies.

Comments Must Be Received On or Before: September 25, 2005.

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: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@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 will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the government.

2. If approved, the action will result in authorizing small entities to furnish the products to the government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Shirt, Woman's, Short Sleeve, Tuck-in

NSN: 8410–01–414–6979—4 Regular
NSN: 8410–01–414–6980—6 Regular
NSN: 8410–01–414–6981—8 Regular
NSN: 8410–01–414–7023—10 Regular
NSN: 8410–01–414–7105—12 Regular
NSN: 8410–01–414–7113—14 Regular
NSN: 8410–01–414–7116—16 Regular
NSN: 8410–01–414–7118—18 Regular
NSN: 8410–01–414–7120—20 Regular
NSN: 8410–01–414–7186—22 Regular
NSN: 8410–01–414–7232—24 Regular
NSN: 8410–01–414–7233—26 Regular
NPA: Middle Georgia Diversified Industries, Inc., Dublin, Georgia.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

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 product 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 proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

Pencil, Mechanical
NSN: 7520–00–724–5606—Pencil, Mechanical
NPA: San Antonio Lighthouse, San Antonio, Texas.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–4675 Filed 8–25–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Produits Forestiers Arbec Inc. (Arbec), the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada and preliminarily finds that Arbec is the successor–in-interest to Uniforêt Inc. (Uniforêt).

EFFECTIVE DATE: August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Saliha Loucif, 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) 482–0631or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On May 22, 2002, the Department of Commerce (Department) issued the antidumping duty order on Certain Softwood Lumber Products from Canada. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36067 (May 22, 2002). On June 29, 2005, Arbec requested that the Department initiate a changed circumstances review, in accordance with section 351.216 of the Department's regulations, to confirm that Arbec is the successor–in-interest to Uniforêt. In its request, Arbec stated that it changed its name to Arbec from Uniforêt on May 9, 2005, and provided supporting documentation.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;
(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;
(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and
(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- properly classified complete door frames
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame,

with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

- *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.[1]
- *Softwood lumber products contained in single family home packages or kits*,[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and, if included in purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
4. The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;
5. The following documentation must be included with the entry documents:
   - a copy of the appropriate home design, plan, or blueprint matching the entry;
   - a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
   - a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
   - in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the *Background* section, we have received information indicating that Uniforêt has changed its name to Arbec. This constitutes changed circumstances warranting a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Arbec's submissions.

Section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making successor–in-interest determinations, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Polychloroprene Rubber from Japan: Final Results of Changed Circumstances Review*, 67 FR 58 (January 2, 2002) citing, *Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no single factor, or combination of factors, will necessarily prove dispositive, the Department will generally consider the new company to be the successor to its predecessor company if the resulting operations are essentially the same as the predecessor company. *Id.* citing, *Industrial Phosphoric Acid from Israel; Final*

[1] For further clarification pertaining to this exclusion, see the additional language concluding the scope description below.

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days, as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[3] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce building.

Results of Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as its predecessor, the Department will assign the new company the cash–deposit rate of its predecessor.

In its June 29, 2005, submission, Arbec argues that it merely changed its name to Arbec from Uniforêt, and that Arbec is the identical company to Uniforêt. As such, Arbec states that the company's management, production facilities, and supplier/customer relationships have not changed. To support its claims, Arbec submitted numerous documents, including: (1) copies of Certificate of Amendment documents amending the name of Uniforêt to Arbec; (2) a copy of a resolution of the Annual and Special Meeting of Shareholders of Uniforêt adopting the modification of Uniforêt's corporate name; (3) a letter from Arbec to the Department, dated May 25, 2005, requesting the recognition of a name change; and (4) a pre–name change advertising flyer announcing the new Arbec logo. Further, Arbec provided information such as a chart of its shareholders, a list of its production facilities, and details on its supplier management agreements, confirming that its ownership, management, production facilities, supply sources and customer base are unchanged from those of its predecessor, Uniforêt.

Based on the information submitted by Arbec, we preliminarily find that Arbec is the successor–in-interest to Uniforêt. Based on the evidence reviewed, we find that Arbec operates as the same business entity as Uniforêt and that the company's senior management, production facilities, supplier relationships, and customers have not changed. Thus, we preliminarily find that Arbec should receive the same antidumping duty cash–deposit rate (*i.e.*, 11.54 percent) with respect to the subject merchandise as Uniforêt, its predecessor company. This rate reflects the ''all others'' rate from the investigation as modified in the *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada*, 70 FR 22636 (May 2, 2005).

As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to continue to suspend shipments of subject merchandise made by Arbec at Uniforêt's cash deposit rate (*i.e.*, 11.54 percent ''all others'' rate). This deposit rate shall remain in effect until publication of the final results of the second administrative review of the order, which covers the period May 1, 2003, through April 30, 2004, in which Uniforêt is a respondent. *See Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Certain Softwood Lumber Products From Canada*, 70 FR 33063, June 7, 2005.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: August 22, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4702 Filed 8–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Notice of Amended Final Results Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 14, 2005, in *Alloy Piping Products, Inc., Flowline Division, et al. v. United States*, Slip Op. 05–69, (''*Alloy Piping II*''), the Court of International Trade (''CIT'') affirmed the Department of Commerce's (the ''Department'') Final Results of Determination Pursuant to Remand (''*Remand Results*''), dated February 14, 2005, and entered a judgment order. This litigation related to the Department's review of the antidumping order on certain stainless steel butt–weld pipe fittings from Taiwan, covering the period June 1, 1999, through May 31, 2000. *See Certain Stainless Steel Butt–Weld Pipe Fittings Final Results of Antidumping Duty Administrative Review, 66 FR 65899, 65900,* (December 21, 2001) (''*Final Results*''). As no further appeals have been filed and there is now a final and conclusive court decision in this action, we are amending the final results of review in this proceeding and we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries subject to this review.

EFFECTIVE DATE: August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–3208, fax 202–482–9089.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Results*, Alloy Piping Products, Inc., Flowline Division, Markovitz Enterprises, Inc., Gerlin Inc., and Taylor Forge Stainless Inc., (the ''Petitioners'') and Ta Chen, filed a lawsuit with the CIT challenging the Department's findings. In *Alloy Piping v. United States*, Slip Op. 04–134, (CIT 2004) (''*Alloy Piping I*''), the CIT instructed the Department to (1) reopen the record, seek additional relevant information regarding employee bonuses, and recalculate the general and administrative (''G&A'') expenses of Ta Chen; and (2) reconsider Ta Chen's U.S. indirect selling expenses and to account for all of Ta Chen's U.S. selling expenses incurred during fiscal year 1999.

The Department complied with the CIT's remand instructions and issued its final results of redetermination pursuant to remand on February 14, 2005. *See* Final Results of Redetermination Pursuant to Remand (''*Remand Results*''). In the *Remand Results*, the Department reopened the record, sought

additional relevant information regarding employee bonuses and recalculated the G&A expenses of Ta Chen to include bonuses to both employees and directors/supervisors. The Department also reconsidered Ta Chen's U.S. indirect selling expenses and determined that there was no need to add financial interest expenses to Ta Chen's U.S. indirect selling expenses. Thus, the Department did not change Ta Chen's U.S. indirect selling expenses. As a result of the remand determination, the antidumping duty rate for Ta Chen was decreased from 6.11 to 6.10 percent. The CIT did not receive comments from either the Petitioners or Ta Chen.

On June 14, 2005, the CIT affirmed the Department's findings in the *Remand Results*. Specifically, the CIT affirmed the Department's recalculation of the G&A expenses for Ta Chen and the Department's decision not to add financial interest expenses to Ta Chen's U.S. indirect selling expenses. See *Alloy Piping II*.

On July 1, 2005, consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F. 2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department notified the public that the CIT's decision was ''not in harmony'' with the *Final Results. See Notice of Court Decision and Suspension of Liquidation: Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan*, 70 FR 126 (July 1, 2005) (''*Timken Notice*''). No party has appealed the CIT's decision. As there is now a final and conclusive court decision in this action, we are amending our final results of review and we will instruct CBP to liquidate entries subject to this review.

Amended Final Results

Because no further appeals have been filed and there is now a final and conclusive decision in the court proceeding, we are amending the final results of administrative review of the antidumping order on certain stainless steel butt–weld pipe fittings from Taiwan for the period June 1, 1999, through May 31, 2000. The revised weight–averaged dumping margin are as follows:

Company	Margin (percent)
Ta Chen	6.10

The Department will issue appraisement instructions directly to the CBP. The Department will instruct CBP to liquidate relevant entries covering the subject merchandise effective the date of publication of this notice.

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: August 18, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4701 Filed 8–25–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 050728206–5206–01]

''Notify U.S.''—New Web Service Tracks Changing Technical Regulations

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) publishes this notice to announce the availability of Notify U.S., a free, web-based e-mail service that offers U.S. citizens, industries, and organizations an opportunity to review and comment on proposed foreign technical regulations that can affect their businesses and their access to international markets. The service is operated by the National Center for Standards and Certification Information (NCSCI) at NIST. NCSCI is the nation's designated Inquiry Point under the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (TBT).

Notify U.S. is the successor to Export Alert!, an e-mail service for proposed technical regulations previously offered by NIST. This new, web-based service offers fast and comprehensive information on proposed technical regulations and conformity assessment procedures from foreign governments that might influence U.S. exports.

Notify U.S. provides users with access to notifications and full texts of regulations issued by the WTO members. In addition, users can monitor proposed changes across chosen countries and 41 fields of industrial or technical activities, or they can select a subset of fields.

ADDRESSES: To learn more—and to sign up for the service—go to the Notify U.S. Web site at *www.nist.gov/notifyus.*

FOR FURTHER INFORMATION CONTACT: For information regarding Notify U.S., contact Ms. Anne Meininger, Technical Information Specialist, National Center for Standards and Certification Information, NIST, 100 Bureau Drive, MS–2160, Gaithersburg, MD 20899; (301) 975–2921.

Dated: August 22, 2005.

William Jeffrey,

Director.

[FR Doc. 05–17022 Filed 8–25–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082305A]

Endangered Species; File No. 1544

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that East Coast Observers Inc., Patricia Bargo, Principal Investigator, PO Box 6192, Norfolk Virginia 23508, has applied in due form for a permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), and leatherback (*Dermochelys coriacea*) marine turtles, and shortnose sturgeon (*Acipenser brevirostrom*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before September 26, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided

the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1544.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Layne Bolen, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The East Coast Observers, Inc. proposes to perform marine turtle abundance and relocation trawls in conjunction with U.S. Army Corps of Engineers (Corps) dredging projects in the Atlantic and Gulf coasts. Collected marine turtles would be handled, measured, flipper and PIT tagged, and released. A single tissue sample may be taken from each individual turtle for genetic analysis. Collected shortnose sturgeon would be captured, handled and released. The applicant is requesting the following annual take of juvenile, immature, and adult marine turtles and shortnose sturgeon: 750 loggerheads, 500 greens, 300 Kemp's ridleys, 10 hawksbills, 10 leatherbacks and 50 shortnose sturgeon. The permit would be issued for five years.

Dated: August 23, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–17040 Filed 8–25–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice; reopening the solicitation for applications for NTIS Advisory Board.

SUMMARY: The National Technical Information Service (NTIS) is reopening the solicitation seeking qualified Candidates to serve as members of its Advisory Board (Board). The Board will meet semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure.

DATES: Applications must be received no later than October 25, 2005.

ADDRESSES: Applications should be submitted to Ellen Herbst, Director, NTIS, 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Walter L. Finch, (703) 605–6507 or via e-mail at *wfinch@ntis.gov.*

SUPPLEMENTARY INFORMATION: The National Technical Information Service (NTIS) issued a **Federal Register** notice on July 12, 2005 (Volume 70, Number 132) seeking five qualified candidates to serve as members of its Advisory Board, one of whom will also be designated chairperson. The Board was established pursuant to section 3704b(c) of Title 15, United States Code. It will meet at least semiannually to advise the Secretary of Commerce, the Under Secretary for Technology, and the Director of NTIS on NTIS's mission, general policies and fee structure. Members will be appointed by the Secretary and will serve for three-year terms. They will receive no compensation but will be authorized travel and per diem expenses. NTIS is seeking candidates who can provide guidance on trends in the information industry and changes in the way NTIS's customers acquire and use its products and services. Interested candidates were given until August 11, 2005 to express their interest by submitting a resume and a statement explaining their interest in serving on the Board. Applications received during the period between when the first notice closed and this notice reopened are considered timely and received.

In order to widen the pool of candidates and to provide candidates greater time to submit their expression of interest, NTIS is reopening the solicitation period until October 25, 2005.

Dated: August 15, 2005.

Ellen Herbst,

Director.

[FR Doc. 05–17021 Filed 8–25–05; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Military Compensation Advisory Committee Meeting

AGENCY: Department of Defense, DOD.

ACTION: Notice; announce public meeting of the Defense Advisory Committee on Military Compensation (DACMC).

SUMMARY: The Defense Advisory Committee on Military Compensation committee will provide the Secretary of Defense, through the Under Secretary of Defense (Personnel and Readiness), with assistance and advice on matters pertaining to military compensation. The agenda for this meeting will be to discuss various aspects of the military pay and benefits system. Members of the Public may attend but participation in Committee discussions by the Public will not be permitted. Written submissions of data, information, and views may be sent to the Committee contact person at the address shown. Submissions should be received by close of business Monday, September 12th to allow time for distribution to the board members prior to the meeting. Persons attending are advised that the Committee is not responsible for providing access to electrical outlets.

DATES: Wednesday, September 21, 2005, from 10 a.m. to 12 p.m. (morning session) and 1 p.m. to 3 p.m. (afternoon session).

ADDRESSES: Crystal City Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Terry Mintz, Designated Federal Official, Defense Advisory Committee on Military Compensation, 2521 S. Clark Street, Arlington, VA 22202. Telephone: (703) 699–2700.

SUPPLEMENTARY INFORMATION: The Committee examines what types of military compensation and benefits are most effective for meeting the needs of the Nation. The committee membership consist of the following members: Chairman: ADM (Ret) Donald L. Pilling. Members: Dr. John P. White; Gen (Ret) Lester L. Lyles; Mr. Frederic W. Cook; Dr. Walter Oi; Dr. Martin Anderson; and Mr. Joseph E. Jannotta.

Dated: August 22, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–17007 Filed 8–25–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 22, 2005—8:15 a.m.—5:15 p.m.

Friday, September 23, 2005—8:30 a.m.—12 p.m.

ADDRESSES: Ameritel Inns, 645 Lindsay Boulevard, Idaho Falls, ID 83402, (208) 523–1400.

FOR FURTHER INFORMATION CONTACT: Jay Vivari, Program Management Specialist (EM–30.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5143.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the EMSSAB is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, September 22, 2005.

8:15 a.m. Welcome and Overview.

David Kipping, Idaho National Laboratory (INL) CAB Chair, and Richard Provencher, Idaho Operations Assistant Manager for EM, to welcome participants; Melissa Nielson, Director of Internal/External Coordination and Doug Frost, Designated Federal Officer, to open meeting; and Wendy Green Lowe, Facilitator, to review meeting objectives, agenda, and ground rules.

8:45 a.m. Round Robin 1: Top Waste Disposition Issues for Each Site-Specific Advisory Board (SSAB).

Each Board has five minutes, followed by 30 minutes for questions and answers, and discussion.

10 a.m. Break.

10:15 a.m. Low-Level Waste (LLW) and Mixed Low-Level Waste (MLLW).

Disposition Strategies.

Briefing by Christine Gelles, Director of Commercial Disposition Options, on EM's complex-wide LLW and MLLW disposition strategies, followed by a discussion with the Chairs.

11:45 a.m. Public Comment Period.

12 p.m. Lunch.

1 p.m. Transuranic (TRU) and High-Level Waste (HLW) Issues.

Briefing by Frank Marcinowski, Deputy Assistant Secretary for Logistics and Waste Disposition, on TRU and HLW disposition issues, including planned documents and schedules, followed by a discussion with the Chairs.

2:30 p.m. Break.

2:45 p.m. Communications Protocol for Waste Disposition Information.

Brief overview of protocol for communications between DOE-Headquarters, Boards and sites.

3 p.m. Waste Disposition Issues.

Facilitated discussion among the Chairs related to waste disposition presentations and their reactions and concerns. Facilitated discussion regarding the potential for developing a joint product related to this topic.

4:45 p.m. Public Comment Period.

5 p.m. Review of Day One Discussions; Overview of Day Two.

Facilitated discussion of reactions to the information presented and an overview of the second day's activities.

Friday, September 23, 2005.

8:30 a.m. Opening.

Welcome and Overview of Day Two Discussions.

8:45 a.m. Round Robin 2: Top Three Issues for Each SSAB.

Each Board has five minutes, followed by 15 minutes for questions and answers, and discussion.

9:45 a.m. Break.

10 a.m. Waste Disposition Issues (continued).

Facilitated follow-up discussions related to joint SSAB product (if necessary and appropriate).

10:30 a.m. Stewardship Activities at INL.

A presentation by members of the INL CAB on Stewardship Activities at INL, followed by a discussion with the Chairs.

11 a.m. SSAB Organizational Issues.

A discussion regarding the timing and location of the next Chairs meeting and whether the SSAB will pursue holding a possible workshop.

11:15 a.m. DOE Organizational Update.

Brief overview of recent developments in the budget and organization at Headquarters.

11:30 a.m. Public Comment Period.

11:45 a.m. Meeting Wrap-Up.

David Kipping, INL CAB Chair, Closing Remarks.

12 p.m. Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jay Vivari at the address above or by telephone at (202) 586–5143. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by calling Jay Vivari at (202) 586–5143.

Issued at Washington, DC, on August 22, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05–16998 Filed 8–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 14, 2005, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Overview of Risk Assessment Process.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals

who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on August 22, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05–16999 Filed 8–25–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–143–000]

Alliant Energy Corporate Services, Inc.; Notice of Filing

August 22, 2005.

Take notice that on August 12, 2005, Alliant Energy Corporate Services, Inc. (AECS) on behalf of Interstate Power and Light Company and Wisconsin Power and Light Company, (collectively, Petitioners) submitted a petition for issuance of a declaratory order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 12, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4694 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–968–000 and ER05–968–001]

Basin Creek Equity Partners, L.L.C.; Notice of Issuance of Order

August 19, 2005.

Basin Creek Equity Partners, L.L.C. (Basin Creek) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy and ancillary at market-based rates. Basin Creek also requested waiver of various Commission regulations. In particular, Basin Creek requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Basin Creek.

On August 18, 2005, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuance of securities or assumptions of liability by Basin Creek should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is September 19, 2005.

Absent a request to be heard in opposition by the deadline above, Basin Creek is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Basin Creek, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Basin Creek issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4665 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ05–5–000]

Basin Electric Power Cooperative; Notice of Filing

August 22, 2005.

Take notice that on August 15, 2005, Basin Electric Power Cooperative tendered for filing revised tariff sheets to its non-jurisdictional open access transmission reciprocity tariff, FERC Electric Tariff, Original Volume No. 1 in compliance with Order No. 2003–C. Basin requests an effective date of July 18, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 6, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4697 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–95–000]

Bendwind, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 2005.

Take notice that on August 12, 2005, Bendwind, LLC (Bendwind) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4693 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–92–000]

DeGreeff DP, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 2005.

Take notice that on August 12, 2005, DeGreeff DP, LLC (DeGreeff DP) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4690 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–91–000]

DeGreeffpa, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 2005.

Take notice that on August 12, 2005, DeGreeffpa, LLC (DeGreeffpa) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4689 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–129–000]

Duke Energy Trading and Marketing, L.L.C.; Notice of Filing

August 22, 2005.

Take notice that, on August 18, 2005, Duke Energy Trading and Marketing, L.L.C. (DETM) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of the transfer by DETM of a wholesale power transaction to Progress Ventures, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time September 8, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4688 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR02–10–006, PR04–15–001, PR04–16–002, PR05–3–001]

Enogex Inc.; Notice of Shortened Comment Period

August 19, 2005.

Take notice that on August 16, 2005, Enogex Inc. filed an Offer of Settlement in the above-docketed proceeding. Included in its filing was a request to shorten the period for filing initial and reply comments in response to the Offer of Settlement. We will grant the request. Accordingly, we are shortening the date for filing initial comments to and including August 26, 2005. Reply comments should be filed on or before August 31, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4668 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–128–000]

Green Country Energy, LLC; Notice of Filing

August 19, 2005.

Take notice that on August 17, 2005, Green Country Energy, LLC (Green Country or Applicant) filed an application under section 203 of the Federal Power Act requesting Commission authorization for the transfer of a 10 percent indirect managing membership interest in Green Country from Cogentrix of Oklahoma, Inc., an indirect wholly-owned subsidiary of Cogentrix Energy, Inc., which is an indirect wholly-owned subsidiary of The Goldman Sachs Group, Inc., to OK Holding, LLC, an affiliate of ITOCHU International Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 7, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4664 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–93–000]

Groen Wind, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 2005.

Take notice that on August 12, 2005, Groen Wind, LLC (Groen) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4691 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–127–000]

Lowell Power LLC; Notice of Filing

August 19, 2005.

Take notice that on August 16, 2005, Lowell Power LLC submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities related to an assignment of such facilities for the benefit of creditors.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 6, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4663 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–125–000]

LSP Ontelaunee Holding, LLC; Calpine Construction Finance Company, L.P.; Ontelaunee Power Operating Company, LLC; Notice of Filing

August 19, 2005.

Take notice that on August 12, 2005, as amended on August 16, 2005, LSP Ontelaunee Holding, LLC (LSPOH), Calpine Construction Finance Company, L.P. (CCFC) and Ontelaunee Power Operating Company, LLC (OPOC) (collectively, Applicants), submitted an application pursuant to section 203 of the Federal Power Act for the authorization of CCFC's sale to LSPOH of OPOC, which will own the Ontelaunee Energy Center (the Ontelaunee Facility) and associated jurisdiction facilities; and an associated internal reorganization. Applicants state that the Ontelaunee Facility is an approximately 584 MW electric generating facility located in Ontelaunee, Pennsylvania.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4662 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–144–000]

New York Independent System Operator, Inc.; Notice of Filing

August 22, 2005.

Take notice that on August 16, 2005, the New York Independent System Operator, Inc. filed a request for expedite action, for tariff waivers and for authorization to recalculate previously assessed persistent undergeneration charges for the period August 1, 2001 to May 31, 2002.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4695 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–94–000]

Sierra Wind, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

August 22, 2005.

Take notice that on August 12, 2005, 2005, Sierra Wind, LLC (Sierra) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4692 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1855–030]

TransCanada Hydro Northeast Inc., Town of Rockingham, VT, Bellows Falls Power Company, LLC, Vermont Hydro-Electric Power Authority; Notice of Deadline To File Answers to Motion

August 19, 2005.

On January 26, 2005, as amended May 24, 2005, TransCanada Hydro Northeast Inc. (TC Hydro NE); the Town of Rockingham, Vermont (the Town); Bellows Falls Power Company, LLC (BFPC); and Vermont Hydro-Electric Power Authority (VHPA) requested Commission approval to transfer the license for the Bellows Falls Project No. 1855 from TC Hydro NE to the Town and BFPC as co-licensees and for approval of a financing plan whereby VHPA would, at closing, take title to project property and transfer it to the Town.

The Town, BFPC, and VHPA filed a motion on August 10, 2005, requesting approval to substitute as a transferee/applicant VHPA for the Town. Movants filed a supplement to their motion on August 17, 2005. The deadline for filing answers to the motion and supplement is 15 days following the filing date of

the supplement, or September 1, 2005. *See* 18 CFR 385.213(d)(1) (2005).

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4666 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–19–000]

Unocal Keystone Gas Storage, LLC; Notice of Petition for Rate Approval

August 22, 2005.

Take notice that on August 10, 2005, Unocal Keystone Gas Storage, LLC (Keystone) tendered for filing, pursuant to § 284.123 of the Commission's regulations, revisions to its Operating Statement with a September 1, 2005 effective date. Keystone states that the proposed revisions serve to clarify the operating provisions and do not propose any new services or new rates. Keystone further requests a waiver of the ''shipper must have title'' policy for off-system capacity it may acquire to provide interstate storage services. Keystone also states that it will not implement its proposal to hold capacity on interconnected pipelines prior to Commission approval.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 31, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4698 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–19–000]

Unocal Keystone Gas Storage, LLC; Notice of Petition for Rate Approval

August 22, 2005.

Take notice that on August 10, 2005, Unocal Keystone Gas Storage, LLC (Keystone) tendered for filing, pursuant to section 284.123 of the Commission's regulations, revisions to its Operating Statement with a September 1, 2005 effective date. Keystone states that the proposed revisions serve to clarify the operating provisions and do not propose any new services or new rates. Keystone further requests a waiver of the ''shipper must have title'' policy for off-system capacity it may acquire to provide interstate storage services. Keystone also states that it will not implement its proposal to hold capacity on interconnected pipelines prior to Commission approval.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 31, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4699 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

August 19, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–419–007.
Applicants: Xcel Energy Operating Companies.
Description: Xcel Energy Services Inc. on behalf of the Xcel Energy Operating Companies submits revised tariff sheets to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff in compliance with Order 2003–C.
Filed Date: 08/15/2005.
Accession Number: 20050817–0046.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–933–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits the Large Generator Interconnection Agreement among Java, LLC the Midwest ISO & Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc.
Filed Date: 08/15/2005.
Accession Number: 20050817–0049.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1101–001; ER05–1346–000.
Applicants: NorthWestern Energy .
Description: NorthWestern Corporation d/b/a NorthWestern Energy submits revised tariff sheets to their open access transmission tariff for NorthWestern Energy's Montana operations, Second Revised Sheet Nos. 197, 198, and 271, FERC Electric Tariff, Fifth Revised Volume No. 5, in compliance with FERC's order issued 7/26/05 Order in Docket No. ER05–1101–000 and Second Revised Sheet Nos. 245, 264, 91, 299, 300 and 305 in compliance with Commission's Order No. 2003–C.
Filed Date: 08/15/2005.
Accession Number: 20050818–0011.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1104–001.
Applicants: Central Vermont Public Service Corporation.
Description: Central Vermont Public Service Corporation submits First Revised Sheet No. 6 to its FERC Electric Tariff, Original Volume No. 9, in compliance with the Commission's Order issued 7/20/05 in Docket No. ER05–1104–000.
Filed Date: 08/15/2005.
Accession Number: 20050817–0047.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1195–001.
Applicants: Silverhill Ltd.
Description: Silverhill, Ltd. submits a revision to its FERC Rate Schedule, Original Volume No. 1, originally filed on 7/5/05.
Filed Date: 08/15/2005.
Accession Number: 20050817–0048.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1215–001.
Applicants: Wholesale Electric Trading LP.
Description: Wholesale Electric Trading LP submits an amendment to its 7/15/05 petition in Docket No. ER05–1215–001 for acceptance of initial rate schedule, waivers and blanket authority.
Filed Date: 08/15/2005.
Accession Number: 20050816–0186.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1333–000.
Applicants: Southern Company Services, Inc.
Description: Southen Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) submits revised tariff sheets to its Open Access Transmission Tariff.
Filed Date: 08/15/2005, as amended on 8/18/2005.
Accession Number: 20050816–0194.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1334–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico (PNM) submits revised tariff sheets to the Joint Open Access Transmission Tariff of PNM and Texas-New Mexico Power Company, pursuant to Order No. 2003–C .
Filed Date: 08/15/2005.
Accession Number: 20050816–0187.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1335–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Company files pro forma revisions to Attachment J of its Open Access Transmission Tariff, in compliance with the Commission's 2003–C.
Filed Date: 08/15/2005.
Accession Number: 20050816–0188.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1337–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits its annual transmission formula rate change filing.
Filed Date: 08/15/2005.
Accession Number: 20050816–0229.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1338–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits pro forma revisions to Annex A, which includes the pro forma Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, to its Open Access Transmission Tariff in compliance with the Commission's Order No. 661, Interconnection for Wind Energy, 111 FERC ¶ 61,353.
Filed Date: 08/15/2005.
Accession Number: 20050816–0185.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1339–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. files pro forma revisions to Annex A to its Open Access Transmission Tariff, in compliance with the Commission's Order 2003–C, Standardization of Interconnection Agreement and Procedures, 111 FERC ¶ 61,401.
Filed Date: 08/15/2005.
Accession Number: 20050816–0184.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1342–000.
Applicants: New England Power Pool.
Description: ISO New England Inc., the New England participating Transmission Owners, and the New England Power Pool submit revised tariff sheets to ISO New England Inc. FERC Electric Tariff No. 3, in compliance with the Commission's Order 2003–C, Standardization of Interconnection Agreement and Procedures, 111 FERC ¶ 61,401 (6/16/05).
Filed Date: 08/15/2005.
Accession Number: 20050818–0003.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1343–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc submits its Quaterly Report on Capital Projects and Quarterly Schedule of Unamortized Costs of Funded Capital Expenditures for the Second Quarter of 2005.
Filed Date: 08/15/2005.
Accession Number: 20050818–0004.
Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1344–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, Entergy Operating Companies) submits its amended tariff sheets to its Open Access Transmission Tariff reflecting the revisions to the pro forma Standard Large Generator Interconnection Procedures and Standard Large Generator Interconnection Agreement set forth in Appendix A pursuant to Order 2003–C.

Filed Date: 08/15/2005.

Accession Number: 20050818–0013.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1345–000.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc, on behalf of itself, Basin Electric Power Cooperative and Powder River Energy Corporation (collectively Transmission Providers) submits revised tariff sheets to the Transmission Providers' Joint Open Access Transmission Tariff, in compliance with the Commission's Order 2003–C, 111 FERC ¶ 61,401 (2005).

Filed Date: 08/15/2005.

Accession Number: 20050818–0012.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1347–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Attachment X of their Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1 in compliance with the Commission's Order No. 2003–C.

Filed Date: 08/15/2005.

Accession Number: 20050818–0010.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4659 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 22, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–110–017; EL05–4–001.

Applicants: Duke Power, Division of Duke Energy Corporation.

Description: Duke Power submits a refund report pursuant to the Commission's order issued 6/30/05 in Docket Nos. ER96–110–013, et al., 111 FERC ¶ 61,506 (2005).

Filed Date: 08/15/2005.

Accession Number: 20050815–5128.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2005.

Docket Numbers: ER96–1085–009; EL05–122–000.

Applicants: South Carolina Electric and Gas Company.

Description: South Carolina Electric and Gas Company submits response to the Commission's Order issued 6/16/05 in Docket Nos. ER96–1085–006; ER96–1085–007 and EL05–122–000, 111 FERC ¶ 61,410 (2005) to address the issue of market power within its control area.

Filed Date: 08/15/2005.

Accession Number: 20050819–0091.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2005.

Docket Numbers: ER02–485–005.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System. Operator, Inc. submits refund report in compliance with the Commission's order issued 6/3/05 in Docket No. ER02–485–004, 111 FERC ¶ 61,355 (2005).

Filed Date: 08/17/2005.

Accession Number: 20050817–5007.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2005.

Docket Numbers: ER05–531–003.

Applicants: ISO New England Inc; New England Power Pool Participation Committee.

Description: ISO New England Inc. and New England Power. Pool Participation Committee submit their partial de-listing 60-day compliance filing pursuant to the Commission's Order issued 3/31/05 in Docket No. ER05–531–000, 110 FERC ¶ 61,396 (2005).

Filed Date: 08/15/2005.

Accession Number: 20050819–0090.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2005.

Docket Numbers: ER05–881–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits the large generator interconnection agreement with High Prairie Wind Farm I, LLC, the Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation in compliance with the Commission's order issued 6/17/05 in Docket No. ER05–881–000, 111 FERC ¶ 61,421 (2005).

Filed Date: 08/17/2005.

Accession Number: 20050819–0088.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2005.

Docket Numbers: ER05–893–004; ER05–895–003.

Applicants: Dominion Retail, Inc.; Elwood Energy LLC.

Description: Dominion Retail, Inc. and Elwood Energy LLC submit amendments to their 6/24/05 filings in Docket Nos. ER05–893–002 and ER05–895–002.

Filed Date: 08/15/2005.

Accession Number: 20050819–0093.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 06, 2005.

Docket Numbers: ER05–981–002.

Applicants: Pocono Energy Services, LLC.

Description: Pocono Energy Services, LLC submits an amendment to its 5/18/05 petition, as amended on 7/5/05, for acceptance of initial rate schedule FERC No. 1, waivers and blanket authority.

Filed Date: 08/17/2005.

Accession Number: 20050819–0092.

Comment Date: 5 p.m. Eastern Time on Monday, August 29, 2005.

Docket Numbers: ER05–988–002.

Applicants: Nevada Power Co.

Description: Nevada Power Co submits an executed Service Agreement for Long-Term Firm Point-to-Point Transmission Service with PacifiCorp in compliance with the Commission's order issued 7/18/05 in Docket No. ER05–988–000, 112 FERC ¶ 61,072.

Filed Date: 08/17/2005.

Accession Number: 20050822–0085.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2005.

Docket Numbers: ER05–1357–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company (SCE) submits revised rate sheets to the Interconnection Facilities Agreement between the City of Corona and SCE, Service Agreement No. 78, under SCE's Wholesale Distribution Access Tariff, First Revised Volume No. 5.

Filed Date: 08/17/2005.

Accession Number: 20050819–0009.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2005.

Docket Numbers: ER05–1358–000.

Applicants: KGen Hinds, LLC.

Description: KGen Hinds LLC submits a rate schedule under which it specifies its rates for providing cost-based reactive support and voltage control from generation sources service from its natural gas-fired, combined cycle electric generation facility located in Hinds County, Mississippi that is currently in the Entergy Mississippi, Inc. control area.

Filed Date: 08/17/2005.

Accession Number: 20050819–0008.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2005.

Docket Numbers: ER05–1359–000.

Applicants: Reliant Energy Maryland Holdings, LLC.

Description: Reliant Energy Maryland Holdings, LLC submits a notice of cancellation of FERC Electric Tariff, Second Revised Volume No. 1, to be effective 10/17/05.

Filed Date: 08/17/2005.

Accession Number: 20050819–0007.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 07, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4660 Filed 8–25–05; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

August 22, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–230–010.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. (NYISO), in response to the Commission's deficiency letter issued 7/31/05, submits an amendment to its 6/1/05 filing regarding the status of efforts by the NYISO and its stakeholders to increase the participation of Demand Side Resources in the markets administrated by the NYISO following the 2/1/05 implementation of the Real Time Scheduling software enhancements and associated market rules.

Filed Date: 08/12/2005.

Accession Number: 20050822–0090.

Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER04–901–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services Inc., acting as agent for the Entergy Operating Companies, resubmits the revised tariff sheets originally submitted on 7/2/05 in Docket No. ER04–901–001.

Filed Date: 08/16/2005.

Accession Number: 20050818–0005.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1207–001.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits a revision to its 7/11/05 triennial filing to update rates applicable to transmission service to be provided to Arkansas Electric Cooperative Corporation for the period 7/01/05 to 12/31/07.

Filed Date: 08/16/2005.

Accession Number: 20050819–0094.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1244–001.

Applicants: Societe Generale Energie (USA) Corp.

Description: Societe Generale Energie (USA) Corp. submits Original Sheet No.

3 to its proposed FERC Electric Tariff, Original Volume 1, which has been modified to correct a typographical error in its 7/25/05 filing in Docket No. ER05–1244–000.

Filed Date: 08/17/2005.

Accession Number: 20050822–0077.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1265–001.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a red-line version of the amended Interconnection Agreement with Central Iowa Power Cooperative filed on 7/29/05 in Docket No. ER05–1265–000.

Filed Date: 08/16/2005.

Accession Number: 20050819–0089.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1348–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company (SCE) submits revised rate sheets to the Interconnection Facilities Agreement between the City of Rancho Cucamonga and SCE, Service Agreement No. 90, under SCE's Wholesale Distribution Access Tariff, FERC Electric Tariff, First Revised Volume No. 5.

Filed Date: 08/16/2005.

Accession Number: 20050818–0168.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1349–000.

Applicants: Western Systems Power Pool, Inc.

Description: Western Systems Power Pool, Inc. (WSSP) submits request to amend the WSPP Agreement to include Susquehanna Energy Products, LLC and JPMorgan Chase Bank, NA as members of the WSPP.

Filed Date: 08/16/2005.

Accession Number: 20050818–0167.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1350–000.

Applicants: Ohio Valley Electric Corporation.

Description: Ohio Valley Electric Corporation submits revisions to its Open Access Transmission Tariff containing, without modification, the changes to the pro forma Large Generator Interconnection Agreement required by Order No. 2003–C.

Filed Date: 08/16/2005.

Accession Number: 20050818–0166.

Comment Date: 5:00 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1351–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, L.L.C. submits revisions to Attachment Q, PJM Credit Policy, of PJM's Open Access Transmission Tariff.

Filed Date: 08/16/2005.

Accession Number: 20050818–0165.

Comment Date: 5:00 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1353–000.

Applicants: ISO New England Inc.; New England Power Pool.

Description: ISO New England Inc and New England Power Pool jointly submit amendments to Market Rule 1 and its Appendix F regarding real-time operating reserve credit eligibility rules.

Filed Date: 08/16/2005.

Accession Number: 20050818–0164.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1354–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. (PJM) submits letter explaining that under the independent entity variation standard PJM is not adopting certain changes addressed by Order No. 2003–C.

Filed Date: 08/16/2005.

Accession Number: 20050818–0163.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1355–000.

Applicants: Lowell Power LLC.

Description: Lowell Power LLC submits its notice of cancellation of its market-based rate authority under Lowell Power LLC, Rate Schedule FERC No. 1.

Filed Date: 08/16/2005.

Accession Number: 20050819–0011.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–752–002.

Applicants: Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.

Description: Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C. submit an errata to their 8/4/05 filing in Docket No. ER05–752–002 which included proposed revisions to the Joint Operating Agreement as required by the Commission's order issued 7/5/05, 112 FERC ¶ 61,029 (2005).

Filed Date: 08/16/2005.

Accession Number: 20050818–0006.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4661 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 19, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1466–003; ER00–814–004; ER01–2067–004; ER01–2068–004; ER01–332–003; ER00–2924–004; ER02–1638–003.
Applicants: Allegheny Power; Allegheny Energy Supply Company; Allegheny Energy Supply Gleason Generating Facility, LLC; Allegheny Energy Supply Hunlock Creek, LLC; Green Valley Hydro, LLC; Buchanan Generation, LLC.
Description: The above-referenced applicants submit their combined triennial market power report and revised tariff sheets.
Filed Date: 08/11/2005.
Accession Number: 20050818–0171.
Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2005.

Docket Numbers: ER01–1403–004; ER01–2968–005; ER01–845–004.
Applicants: FirstEnergy Operating Companies; FirstEnergy Solutions Corp.; FirstEnergy Generation Corp.
Description: The above-reference FirstEnergy Companies submit revised tariff sheets to their market-based rate power sales tariffs, in compliance with the Commission's letter order issued 7/14/05.
Filed Date: 08/11/2005.
Accession Number: 20050817–0042.
Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2005.

Docket Numbers: ER03–382–003; ER00–1749–002; ER00–2508–001; ER99–1801–007; ER01–3035–005; ER02–1762–003; ER01–852–004; ER02–2453–002; ER02–2451–002; ER02–2450–002; ER02–2452–002; ER02–2449–002.
Applicants: Reliant Energy Electric Solutions, LLC; Reliant Energy Maryland Holdings, LLC and Reliant Energy New Jersey Holdings, LLC; Reliant Energy Mid-Atlantic Power Holdings, LLC; Reliant Energy Services, Inc.; Reliant Energy Seward, LLC; Reliant Energy Solutions East, LLC; Twelvepole Creek, LLC; Reliant Energy Coolwater, Inc.; Reliant Energy Ellwood, Inc.; Reliant Energy Etiwanda, Inc.; Reliant Energy Mandalay, Inc.; Reliant Energy Ormond Beach, Inc.
Description: The above-referenced applicants submit amended tariff sheets revised to correct the effective date of the sheets filed by the applicants on 6/6/2005.
Filed Date: 08/11/2005.
Accession Number: 20050812–0183.
Comment Date: 5 p.m. Eastern Time on Friday, September 1, 2005.

Docket Numbers: ER04–372–004.
Applicants: Metropolitan Edison Company; Pennsylvania Electric Company.
Description: Metropolitan Edison Company and Pennsylvania Electric Company submit Substitute Original Sheet No. 1 to their FERC Electric Tariff, Original Volume No.1, in compliance with the Commission's letter order issued 7/14/05.
Filed Date: 08/11/2005.
Accession Number: 20050817–0039.
Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2005.

Docket Numbers: ER04–434–004.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits revised tariff sheets to its Open Access Transmission Tariff incorporating revisions to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement in compliance with Order 2003–C.
Filed Date: 08/12/2005.
Accession Number: 20050817–0045.
Comment Date: 5 p.m. Eastern Time on Friday, September 2, 2005.

Docket Numbers: ER04–1147–001.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation d/b/a Progress Energy Florida, Inc. submits amended cost support for its rate schedule providing for cost-based power sales to Reedy Creek Improvement District, Rate Schedule No. 190.
Filed Date: 08/11/2005.
Accession Number: 20050817–0038.
Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2005.

Docket Numbers: ER05–1150–002.
Applicants: Duke Energy Corporation.
Description: Duke Energy Corporation, on behalf of Duke Electric Transmission (collectively, Duke) submits additional supporting information and an errata to its 6/26/05 filing, as amended on 7/13/05, of an amendment to the Network Integration Transmission Service Agreement with New Horizon Electric Cooperative, Inc., Service Agreement No. 208 under Duke's Open Access Transmission Tariff.
Filed Date: 08/12/2005.
Accession Number: 20050817–0044.
Comment Date: 5 p.m. Eastern Time on Friday, September 2, 2005.

Docket Numbers: ER05–1341–000.
Applicants: Maine Public Service Company.
Description: Main Public Service Company submits revisions to its Open Access Transmission Tariff incorporating Order 2003–C's, revisions to the Commission's pro forma Standard Large Generator Interconnection Procedures and Standard Large Generator Interconnection Agreement.
Filed Date: 08/12/2005.
Accession Number: 20050818–0002.
Comment Date: 5 p.m. Eastern Time on Friday, September 2, 2005.

Docket Numbers: ER05–876–002.
Applicants: Direct Energy Services, LLC.
Description: Direct Energy Services, LLC submits a revised tariff sheet designated as Rate Schedule FERC 1, First Revised Sheet 4, in compliance with the Commission's order issued 7/20/05 in Docket Nos. ER05–876–000 and 001.
Filed Date: 08/12/2005.
Accession Number: 20050817–0043.
Comment Date: 5 p.m. Eastern Time on Friday, September 2, 2005.

Docket Numbers: ER05–941–002.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator Inc. submitted a compliance filing pursuant to the Commission's order issued 7/1/05 in Docket No. ER05–941–000.
Filed Date: 08/16/2005.
Accession Number: 20050816–5063.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 30, 2005.

Docket Numbers: ER05–974–001.
Applicants: Cleveland Electric Illuminating Company; Ohio Edison Company; Pennsylvania Power Company; Toledo Edison Company.
Description: The above-referenced FirstEnergy Operating Companies submit Substitute Original Sheet No.16 to FirstEnergy Service Company FERC Electric Tariff, Second Revised Volume No. 2, in compliance with the Commission's order issued 7/14/05 in Docket No. ER05–974–000.
Filed Date: 08/11/2005.
Accession Number: 20050817–0040.
Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2005.

Docket Numbers: ER05–975–001.
Applicants: FirstEnergy Generation Corp.
Description: FirstEnergy Generation Corp. submits Substitute Original Sheet No. 1 to FERC Electric Tariff, First Revised Volume No.1 in compliance with the Commission's letter order issued 7/14/05 in Docket No. ER05–9975–000.
Filed Date: 08/11/2005.
Accession Number: 20050817–0041.
Comment Date: 5 p.m. Eastern Time on Thursday, September 1, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern

time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4669 Filed 8–25–05; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–000, ER02–1656–026]

California Independent System Operator Corporation; Notice of Technical Conference

August 22, 2005.

In accordance with the directive of the July 1, 2005 Order on Further Amendments to the California Independent System Operator's Comprehensive Market Redesign Proposal,[1] Federal Energy Regulatory Commission (Commission) staff will convene a technical conference to explore tariff issues related to demand response options, including special case nodal pricing. In addition to demand response generally, and special case nodal pricing in particular, participants should also come prepared to discuss the issue of wholesale load choosing to opt out of Load Aggregation Points (LAP).[2]

The technical conference, which all parties may attend, will be held in San Francisco, California, on Tuesday, September 13, 2005, at 9 a.m. (PST) at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, California 94102; (415) 392–8000.

For further information, contact *Heidi.Werntz@FERC.gov*; (202) 502–8910.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4696 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *California Independent System Operator, Inc.*, 112 FERC ¶ 61,013 at P 39 (2005).

[2] *See id.* at P 37 (''[E]ach wholesale customer should have the option of establishing, as a separate zone, the set of nodes where it receives energy).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000 and EL00–98–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Technical Conference (Listen-Only Call-In Number)

August 22, 2005.

On August 16, 2005, the Commission issued a notice informing parties that the Federal Energy Regulatory Commission staff will convene a technical conference to finalize the template for submission of cost filings, as discussed in *San Diego Gas & Electric Co.* v. *Sellers of Energy & Ancillary Services, et al.*, 112 FERC ¶ 61,1176 (2005).

This technical conference will be held on August 25, 2005, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, beginning at 9 a.m. (EST) in the Commission Meeting Room.

By this notice, we announce further that a listen-only telephone line will be provided for interested parties to call-in and listen to the telephone conference. Below is the call-in information for the listen-only conference call:

Date: August 25, 2005.
Time: 9 a.m. EDT.
Toll-free Number: 888–390–0678.
Passcode: 5848040.

For more information about the conference, please contact: Heidi Werntz, Office of General Counsel, Federal Energy Regulatory Commission, at (202) 502–8910 or *Heidi.Werntz@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–4700 Filed 8–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project; Rate Order No. WAPA–120

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning existing ratesetting formula and FY 2006 base charge and rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–120 and Rate Schedule BCP-F7, placing the electric service ratesetting formula and fiscal year (FY) 2006 base charge and rates from the Boulder Canyon Project (BCP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional base charge and rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional base charge and rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of power investment within the allowable periods.

DATES: Rate Schedule BCP–F7 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 2005, and will be in effect until the Commission confirms, approves, and places the rate schedule in effect on a final basis through September 30, 2010, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, PO Box 6457, Phoenix, AZ 85005–6457, (602) 605–2453, e-mail *carlson@wapa.gov* or Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, PO Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved existing Rate Schedule BCP–F6 for BCP electric service on September 18, 2000 (Rate Order No. WAPA–94, October 13, 2000, 65 FR 60932). The Commission confirmed and approved the rate schedule on July 31, 2001, in FERC Docket No. EF00–5092–000. The existing rate schedule became effective October 1, 2000, and expires September 30, 2005.

The formula for establishing annual rates set forth in Rate Schedule BCP–-F6, which is effective from October 1, 2000, through September 30, 2005, will be superseded by Rate Schedule BCP–-F7 for the period October 1, 2005, and ending September 30, 2010. The provisional base charge and rates for the one year period from October 1, 2005, to September 30, 2006, will consist of a base charge of $57,465,018 and an energy charge of 7.03 mills/kWh, and a capacity charge of $1.37 per kWmonth. This results in an overall composite rate of 14.05 mills/kWh on October 1, 2005. The composite rate of 14.05 mills/kWh on October 1, 2005, represents a decrease of approximately five percent when compared with the composite rate of 14.82 mills/kWh during the last year of BCP–F6 (October 1, 2004–September 30, 2005).[1]

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–120, the provisional ratesetting formula, and the FY 2006 proposed BCP electric service base charge and rates into effect on an interim basis. The new Rate Schedule BCP–F7 will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: August 11, 2005.

Clay Sell,

Deputy Secretary.

Department of Energy

Deputy Secretary

[Rate Order No. WAPA–120]

In the matter of: Western Area Power Administration, Rate Adjustment for the Boulder Canyon Project; Order Confirming, Approving, and Placing the Boulder Canyon Project Electric Service Ratesetting Formula and FY 2006 Base Charge and Rates Into Effect on an Interim Basis

The base charge and rates were established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

ARR: Annual Revenue Requirement. It is the annual base charge.

BC: Base charge. The total charge paid by all Contractors for capacity and energy based on the annual revenue requirement. The base charge shall be composed of a capacity component and an energy component.

CD: Capacity Dollars. Fifty percent (50%) of the annual revenue requirement.

CO: Carry Over. Revenue surplus or deficit from the previous FY, excluding the funds for the working capital balance.

CS: Capacity Sales.

Commission: Federal Energy Regulatory Commission.

Composite Rate: The rate for electric service which is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills/kWh and used for comparison purposes.

Contractor: An entity that has a contract with Western for BCP Electric Service.

Customer: An entity with a contract that is receiving service from Western's DSWR.

[1] Under Rate schedule BCP–F6, the base charge during the one-year period (October 1, 2004 through September 30, 2005) was $57,654,683. The energy rate during this time was 7.41 mills/kWh. The capacity charge during this time was $1.39 per kWmonth. This resulted in an overall composite rate of 14.82 mills/kWh for this one-year period. See Department of Energy, Western Area Power Administration, Boulder Canyon Project-Base Charge and Rates, approved by Deputy Secretary McSlarrow, 69 FR 51458, August 19, 2004.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and ratemaking procedures.

DSWR: The Desert Southwest Region of Western.

ED: Energy Dollars. Fifty percent (50%) of the annual base charge.

ES: Energy Sales.

FCR: Forecast Capacity Rate. The rate which sets forth the charges for capacity. It is expressed in $ per kWmonth.

FER: Forecast Energy Rate. The rate which sets forth the charges for energy. It is expressed in mills/kWh.

FERC: The Commission (to be used when referencing Commission Orders).

FRN: **Federal Register** notice.

FY: Fiscal Year; October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

Mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.

Mills/kWh: Mills per kilowatthour—the unit of charge for energy.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

O&M: Operation and Maintenance.

OM&R: Operation, Maintenance & Replacement.

OR: Other Revenues. This is non-power revenue from the visitors' services at Hoover Dam.

Power: Capacity and energy.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.

PRS: Power repayment study.

PY: Prior Year.

Ratesetting PRS: The PRS used for the rate adjustment proposal in support of the provisional base charge and rates.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws. Viewed as a whole, these laws create the originating framework under which Western markets power.

Revenue Requirement: The revenue required to recover annual expenses, such as O&M, interest, repayment of Federal investments, and other assigned costs.

Supporting Documentation: A compilation of data and documents supporting the rate package and the rate proposal.

TE: Total Expenses. All annual costs such as operation and maintenance, payment to states, uprating payments, interest expense, and other expenses.

WSR: Water Sales Revenue. Revenue from sales associated with water being diverted from the lower Colorado River above and below Hoover Dam.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The new interim ratesetting formula, base charge and rates will take effect on the first day of the first full billing period beginning on or after October 1, 2005, and will remain in effect until September 30, 2006, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. On February 7, 2005, the proposed rate adjustment informal process began when Western mailed a notice announcing an informal customer meeting to all BCP customers and interested parties. Western also announced the public forum dates as well as access to the BCP rate adjustment Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*.

2. On February 18, 2005, a notice (70 FR 8361) was published in the **Federal Register**, announcing the proposed base charge and rates for BCP beginning the public consultation and comment period, and announcing the public information and public comment forums.

3. On February 23, 2005, Western mailed the published **Federal Register** notice dated February 18, 2005, to the BCP customers and interested parties informing them of the public information forum on April 6, 2005, and public comment forum on May 4, 2005, in Phoenix, Arizona. Western also announced that the FRN had been posted to the Web site.

4. On March 9, 2005, Western hosted an informal customer meeting in Phoenix, Arizona. At this informal meeting, Western explained the rationale for the rate adjustment and answered questions.

5. On March 24, 2005, Western provided the customers with information in response to requests at the informal meeting held March 9, 2005.

6. On April 6, 2005, Western held the public information forum at the DSWR Office in Phoenix, AZ. Western provided detailed explanations of the proposed base charge and rates for BCP and answered questions. Western provided a copy of the rate presentation, supporting documentation, and informational handouts.

7. On May 4, 2005, Western held a comment forum to give the public an opportunity to comment for the record. Five individuals representing eleven entities commented at this forum.

8. Western received seven comment letters during the consultation and comment period, which ended May 19, 2005. All formally submitted comments have been considered in preparing this Rate Order.

Comments

Written comments were received from the following organizations: Arizona Power Authority, Arizona; Colorado River Commission, Nevada; Energy Outfitters, LLC, Arizona; Irrigation & Electrical Districts Association of Arizona, Arizona; Metropolitan Water District of Southern California, California; Salt River Project, Arizona; Utility Resource Services, Arizona.

Oral comments were made on behalf of the following organizations: Aguila Irrigation District, Arizona; Arizona Power Authority, Arizona; City of Safford, Arizona; Colorado River Commission, Nevada; Electrical District Number 8, Arizona; Harquahala Valley Power District, Arizona; Irrigation & Electrical Districts Association of Arizona, Arizona; Metropolitan Water District of Southern California, California; McMullen Valley Water Conservation District, Arizona; Salt River Project, Arizona; Tonopah Irrigation District, Arizona.

Project Description

The BCP was authorized for construction by the Boulder Canyon Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River on the Arizona-Nevada border. The dam was built for the express purposes of (1) controlling the flooding in the lower regions of the Colorado River drainage system, (2) improving navigation of the Colorado River and its tributaries, (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands, and (4) generating

electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking. Construction of Hoover Dam, formerly known as Boulder Dam, began in 1930. Commercial power generation began in 1936 with the first generating unit of the powerplant going into service in 1937. The Hoover Powerplant has 19 generating units and an installed capacity of 2,074 MW.

The Hoover Powerplant Act of 1984 sets forth the amounts of Hoover power to be sold beginning June 1, 1987, to the 15 Contractors located in the states of Arizona, California, and Nevada.

Power Repayment Study—Electric Service Base Charge and Rates

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the BCP. Repayment criteria are based on law, policies including DOE Order RA 6120.2, and authorizing legislation.

When compared to the existing BCP electric service base charge and rates under Rate Schedule BCP–F6 the proposed base charge and rates for BCP electric service reflect an overall composite rate decrease of approximately 5 percent on October 1, 2005. The current composite rate under Rate Schedule BCP–F6 is 14.82 mills/kWh. The proposed composite rate is 14.05 mills/kWh. The following table compares the current and proposed electric service base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current	Proposed	Difference (change)
Rate Schedule	*BCP–F6*	*BCP–F7*	
Base Charge ($)	57,654,683	57,465,018	(189,665)
Energy (mills/kWh)	7.41	7.03	(0.38)
Capacity ($/kW month)	1.39	1.37	(0.02)
Composite Rate (mills/kWh)	14.82	14.05	(0.77)

The provisional base charge and rates for electric service are a formula calculation based on the annual revenue requirement. There are no changes to the existing electric service formula under Rate Schedule BCP–F7.

The proposed ratesetting formula would be effective October 1, 2005, through September 30, 2010, determining an annual calculation using the following formulas:

ARR = TE − PY CO − WSR − OR

BC = ARR

ED = .5 * BC

CD = .5 * BC

FER = ED/ES

FCR = CD/CS

Certification of Rates

Western's Administrator has certified that the interim base charge and rates for BCP electric service are the lowest possible consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

BCP Electric Service Base Charge and Rates Discussion

According to Reclamation Law, Western must establish power rates sufficient to recover operation, maintenance, purchased power expenses, interest expenses, and repayment of power investment and irrigation aid.

The BCP electric service base charge and rates are decreasing in FY 2006 due to the carryover of $3.4 million of post September 11, 2001, security costs that were incorporated into the BCP rates for FY 2005 prior to direction from Congress for Reclamation not to begin the reimbursement process until instructed to do so by Congress. Although total annual expenses are increasing from FY 2005 to FY 2006, the $3.4 million of non-reimbursable security costs is being projected as FY 2005 year end carryover. The result is an overall decrease of approximately $190,000 in the base charge since the existing base charge and rates were established.

The existing base charge and rates for BCP electric service under Rate Schedule BCP–F6 expire September 30, 2005. Effective October 1, 2005, Rate Schedule BCP–F6 will be superseded by the new base charge and rates in Rate Schedule BCP–F7. The provisional rates for BCP electric service consist of a base charge, a capacity rate, and an energy rate. The provisional base charge is $57,465,018, the provisional capacity rate is $1.37/kWmonth, and the provisional energy rate is 7.03 mills/kWh.

Statement of Revenue and Related Expenses

The annual revenue requirement for the BCP is based upon the PRS calculations for future requirements, which will be adjusted when FY actuals are known. The following table provides a summary of the revenues and expenses for the existing BCP electric service ratesetting formula and also the projected revenue and expenses for the 5-year provisional rate approval period.

BCP REVENUES AND EXPENSES

[$1,000]

Item	Existing (FY 2001–2005)	Proposed (FY 2006–2010)	Difference
Total Revenues	$317,809	$390,324	$72,515
Revenue Distribution:			
O&M	141,448	197,292	55,844
Payments to States	3,000	3,000	0
Other Expense	42,490	42,998	508
Uprating Payments	55,751	65,614	9,863
Replacements	9,456	21,044	11,588
Interest Expense	57,792	55,230	(2,562)
Investment Repayment	9,811	8,583	(1,228)

BCP REVENUES AND EXPENSES—Continued

[$1,000]

Item	Existing (FY 2001–2005)	Proposed (FY 2006–2010)	Difference
Working Capital	0	0	0
Prior Year Carryover	(1,939)	(3,437)	(1,498)
Total Revenue Distribution	317,809	390,324	72,515

Basis for Rate Development

The existing base charge and rates for BCP electric service in Rate Schedule BCP–F6 expire September 30, 2005. The existing base charge and rates are in excess of the amount needed to pay all annual costs, including interest expense, and repayment of investment within the allowable period. The adjusted base charge and rates reflect increases in the overall O&M program costs, increased uprating program payments, and replacement costs. However, since $3.4 million for post September 11, 2001, security costs are being returned to the contractors in the form of a carryover in FY 2005, the result is a decrease in the FY 2006 Base Charge. The provisional base charge and rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of power investment within the allowable periods. The provisional base charge and rates will take effect on October 1, 2005, to correspond with the start of the Federal FY, and will remain in effect through September 30, 2006.

Comments

The comments and responses regarding the electric service base charge and rates, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary.

The issues discussed are (1) post September 11, 2001, security costs, (2) visitor center costs, (3) O&M costs, and (4) rate adjustment.

1. Post September 11, 2001, Security Costs

A. *Comment:* Contractors request additional clarification regarding the use of funds. Under the FY 2005 Base Charge $3.9 million is being collected for security costs. Since the FY 2005 security costs have been deemed non-reimbursable by Congress, and a decision was made at the October 2004 Engineering & Operating Committee meeting that $500,000 of the $3.9 million would be used in FY 2005 to cover the stainless steel wicket gates, the Contractors' understanding is that the remaining $3.4 million would not be expended and would be returned in the form of a carryover. The Contractors request assurance that the $3.4 million be credited back to them and the projected $4.3 million for security costs for FY 2006 will not be included in the FY 2006 Base Charge.

Response: It is the opinion of the Bureau of Reclamation, Lower Colorado Dams Area office, that the Area Manager has legal authority, under the terms of the Boulder Canyon Project Implementation Agreement, and with customer review and concurrence to re-program funds collected for necessary maintenance expenditures. The remaining $3.4 million collected for security costs in FY 2005 has been shown as carryover in FY 2005 which will reduce the FY 2006 revenue requirement. Based on information presented in Reclamation's recent report to Congress concerning the Reimbursement of Security Costs on Reclamation's Facilities, security funding for FY 2006 will remain in the base charge until otherwise directed by Congress.

B. *Comment:* The Contractors request that detailed data for the security costs be separated out in the next 10-year operating plan to show the reimbursable and non-reimbursable costs for past years beginning in FY 2001 and projections into the future.

Response: The FY 2007 10-Year Operating Plan will include a spreadsheet detailing reimbursable and non-reimbursable security costs from FY 2001 through FY 2016.

C. *Comment:* An interested party pointed out that we are operating under the Omnibus Bill with direct instructions from Congress that for FY 2005, and future projections, security costs are deemed non-reimbursable and until Congress directs otherwise, this rate process should proceed on the basis of the current Congressional instructions.

Response: Reclamation is not ignoring the Omnibus Bill. There are two ongoing processes involved in the BCP. The rate process for FY 2005 went into effect October 1, 2004. All information available at the time the rate was being developed indicated that the security costs for FY 2005 and out-years would be reimbursable. The Omnibus Bill was not passed until December 2004 when the rate process for FY 2005 was completed. In addition to directing Reclamation to stay the reimbursement process, Congress directed Reclamation to provide a report by May 1, 2005, to assist Congress in breaking out planned reimbursable and non-reimbursable security costs by project and region. Reclamation has submitted the report. It is currently being reviewed in Washington, D.C. Reclamation will incorporate Congress's findings on the report into its decisions for the FY 2006 Base Charge. If the post September 11, 2001, security costs are deemed reimbursable, Reclamation will include the costs. If these costs are deemed to be non-reimbursable and Reclamation does not receive the information in time to remove them from the FY 2006 Base Charge, Reclamation will not expend the funds and they will be returned to the Contractors.

D. *Comment:* A customer stated it is not appropriate to put the burden of the national post September 11, 2001 security costs on the power customers and requested that these costs be removed from the FY 2006 annual Base Charge. The customer also shared that protecting Hoover Dam should be a responsibility of the Federal government, as is protecting any other national critical infrastructure.

Response: The Reimbursement of Security Costs on Reclamation's Facilities report to Congress states:

> Reclamation considers the ongoing costs of guards and patrol to clearly fall within the definition of project O&M costs. Therefore, those costs are subject to reimbursement based on project cost allocations. Like equipment maintenance, routine facility security activities such as guards and patrol are critical in ensuring the uninterrupted supply of Reclamation water and power.
>
> Beginning in FY 2006, Reclamation's budget assumes that increased annual costs associated with facility guard and patrol activities are project O&M costs, which will

be allocated to project purposes and subject to reimbursement.

2. Visitor Center Costs

A. *Comment:* The Contractors expressed a concern with new costs being passed through to the Contractors for potential future concepts for enhancing tourism at Hoover.

Response: Other than the new exhibit presented in previous 10-year plans, no other enhancements have been approved. Future concepts for enhancing tourism are considered on a near continuous basis to ensure that the visitor facility covers its O&M costs entirely and also contributes an appropriate share to the visitor center debt service. Any decisions that would require increasing costs to the power contractors would be presented in future ten year plans and discussed thoroughly before implementation.

B. *Comment:* The Contractors encourage Western and Reclamation to continue to seek efficiencies in O&M and cost containment with the ultimate goal that the visitor center operates in a self-sufficient mode. Contractors remain concerned with the continuing imbalance between visitor center costs and revenues since the September 11, 2001 attack and encourage Reclamation to acquire sources of funding other than the BCP Contractors.

Response: Both Western and Reclamation have expended significant effort on keeping costs down and increasing efficiency and productivity, and will continue their ongoing effort to manage costs. One of the goals of the visitor center is to operate in a self-sufficient mode as identified in the Boulder Canyon Project Implementation Plan. Reclamation and Western, along with the power contractors, are committed to working toward achieving that goal. Cost containment, operating efficiency, and revenue generation are all mechanisms employed to achieve the goal.

C. *Comment:* The Contractors believe that Congress never intended that the visitor center facility would result in such a significant drain on resources. They suggested that if the facility could not be operated on a businesslike basis, especially since September 11, 2001, that perhaps its operations should be turned over to a private contractor who will be responsible for generating sufficient revenues to make the necessary contributions to repayment of the facility. When the O&M costs are greater than the revenue requirement to contribute to capital repayment as promised by Reclamation, the Contractors believe they would be better off paying the entire repayment burden and avoiding the additional drain of operating the facility in its current fashion.

Response: Reclamation agreed to use its best efforts to generate enough revenue from the visitor facilities to cover approximately 50 percent of the capital cost. Reclamation remains committed to that goal.

3. O&M Costs

A. *Comment:* A Contractor encouraged Reclamation to take a second look at its FY 2006 O&M expenses and reduce or defer costs such as materials and supplies from FY 2005 to FY 2006 where proper management of purchases can lead to these cost increases being lowered rather than raised. The Contractor reminded Reclamation of a pledge it made a few years ago to the Contractors that it would limit annual cost increases to 3 percent or the rate of inflation if higher.

Response: Over the past few years, Reclamation has improved unit availability and dramatically reduced critical items identified in the comprehensive power review. Costs to accomplish these items exceeded the rate of inflation in 2 of the past 5 years and, overall, the simple average of the annual percentage changes is 3.22 percent. The average percentage change, considering the compound nature of inflation and indexing, suggests an average rate of increase of about 3.1 percent. Reclamation anticipates that future year increases can be held to no more than the rate of inflation.

Fiscal year	Actual O&M program [1]	Percent of increase from prior year
2001	$34,579	
2002	$33,567	(2.9%)
2003	$36,507	8.8%
2004	$37,398	2.4%
	Estimated O&M Program [1]	
2005	$39,962	6.9%
2006	$40,324	0.9%
	Average Percent of Change	3.22%

[1] Includes Operations, Maintenance, Post Civil Service Retirement, Administrative & General Expenses, Extraordinary Operations and Maintenance, Replacements, and Visitor Services (Security costs are not included).

4. Rate Adjustment

A. *Comment:* A Contractor asks Western to confirm a rate increase would not be necessary for FY 2006 since the FY 2005 post September 11, 2001, security costs have been deemed non-reimbursable.

Response: The rate adjustment increase is no longer necessary. Although total annual expenses increased from FY 2005 to FY 2006, the carryover of the $3.4 million in security costs in FY 2005 resulted in a decrease for the FY 2006 Base Charge and rates.

Availability of Information

Information about this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western used to develop the provisional base charge and rates, is available for public review in the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is

a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The interim ratesetting formula and FY 2006 Base Charge and rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective October 1, 2005, Rate Schedule BCP–F7, for the Boulder Canyon Project of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending the Commission's confirmation and approval of it or substitute rates on a final basis through September 30, 2010.

Dated: August 11, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule BCP–F7 (Supersedes Schedule BCP–F6)

United States Department of Energy, Western Area Power Administration

Boulder Canyon Project, Arizona, Nevada, Southern California; Schedule of Rates for Electric Service

Effective: The first day of the first full billing period beginning on or after October 1, 2005, and remaining in effect through September 30, 2010, or until superseded.

Available: In the marketing area serviced by the Boulder Canyon Project (BCP).

Applicable: To power Contractors served by the BCP supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Base Charge: The total charge paid by a Contractor for annual capacity and energy based on the annual revenue requirement. The base charge shall be composed of an energy component and a capacity component:

Energy Charge: Each Contractor shall be billed monthly an energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's firm energy percentage multiplied by the Contractor's monthly energy ratio as provided by contract.

Capacity Charge: Each Contractor shall be billed monthly a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent capacity percentage as provided by contract.

Forecast Rates: Energy: Shall be equal to the Rate Year Energy Dollar divided by the lesser of the total master schedule energy or 4,501.001 million kWhs. This rate is to be applied for use of excess energy, unauthorized overruns, and water pump energy.

Capacity: Shall be equal to the Rate Year Capacity Dollar divided by 1,951,000 kWs, to be applied for use of unauthorized overruns.

Calculated Energy Rate: Within 90 days after the end of each rate year, a Calculated Energy Rate shall be calculated. If the energy deemed delivered is greater than 4,501.001 million kWhs, then the Calculated Energy Rate shall be applied to each Contractor's energy deemed delivered. A credit or debit shall be established based on the difference between the Contractor's Energy Dollar and the Contractor's actual energy charge, to be applied the following month calculated or as soon as possible thereafter.

Lower Basin Development Fund Contribution Charge: The contribution charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overrun shall be billed at 10 times the Forecast Energy Rate and Forecast Capacity Rate. The contribution charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 05–17000 Filed 8–25–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7961–1]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice Regarding Waiver of Federal Preemption.

SUMMARY: EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of federal preemption for its heavy-duty diesel regulations for 2007 and subsequent model year vehicles and engines (2007 California Heavy Duty Diesel Engine Standards) and related test procedures including the not-to-exceed (NTE) and supplemental steady-state tests (supplemental test procedures) to determine compliance with applicable standards. By letter dated July 16, 2004, the California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its 2007 California Heavy Duty Diesel Engine Standards, which primarily align California's standards and test procedures with the federal standards and test procedures for 2007 and subsequent model year vehicles and engines.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket No. OAR–2004–0132. The docket is located

at The Air Docket, room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material. Additionally, an electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the electronic docket system, select ''search,'' then key in the appropriate docket ID number for Docket OAR–2004–0132.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (*http://www.epa.gov/OTAQ*). Users can find these documents by accessing the OTAQ Web site and looking at the path entitled, ''Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA-AIR*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 343–9256. E-Mail Address: *Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of federal preemption pursuant to section 209(b) of the Act for the 2007 California Heavy Duty Diesel Engine Standards.[1]

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

As further explained in the Decision Document supporting today's decision, EPA received a series of comments supporting CARB's request for a waiver of federal preemption. EPA did not receive any comment suggesting that CARB's request should be denied or a decision delayed based on the criteria set forth in section 209(b) of the Act. EPA did receive comment that the waiver of federal preemption should otherwise be delayed, but for the reasons set forth below and further discussed in the Decision Document, EPA is granting CARB's request for a waiver of federal preemption.

CARB determined that its 2007 California Heavy Duty Diesel Engine Standards do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No information has been submitted to demonstrate that California's standards, in the aggregate, are less protective of public health and welfare than the applicable Federal standards. Thus, EPA cannot make a finding that CARB's determination, that its 2007 California Heavy Duty Diesel Engine Standards are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject 2007 California Heavy Duty Diesel Engine Standards. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its 2007 California Heavy Duty Diesel Engine Standards are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's 2007 California Heavy Duty Diesel Engine Standards are inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by October 25, 2005. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

[1] The CARB Board approved the 2007 Heavy Duty Diesel Engine Standards by Resolution 01–38 on October 25, 2001 (See Attachment 1 to CARB's July 16, 2004 Waiver Request Letter). The regulations covered by today's waiver include CARB's amendments to title 13, California Code of Regulations (CCR), section 1956.8. The specific regulatory text and the incorporated document covered by the 2007 Heavy Duty Diesel Engine Standards regulation are: section 1956.8, title 13, CCR, as shown in Attachment 2 to CARB's Waiver Request Letter, and amendments to the related test procedures incorporated in section 1956.8(b), ''California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles,'' also shown in Attachment 2. For further discussion of the regulations covered by today's decision please see the Decision Document.

Dated: August 19, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 05–17037 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7960–5]

Notice of Prevention of Significant Deterioration Final Determination for BP Cherry Point Cogeneration Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that on June 21, 2005, the Environmental Appeals Board (''EAB'') of EPA denied review of a petition for review of a Prevention of Significant Deterioration (''PSD'') permit (''Permit'') that EPA Region 10 and the State of Washington's Energy Facility Site Evaluation Council (''EFSEC'') issued to BP West Coast Products, L.L.C. (''BP'') for construction and operation of the BP Cherry Point Cogeneration Facility (''Facility''), a natural gas-fired cogeneration facility. The Permit was issued pursuant to 40 CFR 52.21.

DATES: The effective date of the EAB's decision is June 21, 2005. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act (''CAA''), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of August 26, 2005.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101. To arrange viewing of these documents, call Dan Meyer at (206) 553–4150.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, EPA, Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Is EPA Taking?
B. What Is the Background Information?
C. What Did the EAB Decide?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit issued by EPA Region 10 and EFSEC (''Permitting Authorities'') pursuant to the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 720-megawatt natural gas-fired, combined cycle combustion turbine cogeneration facility located on a 33-acre parcel of land adjacent to BP's existing Cherry Point petroleum refinery in Whatcom County, Washington. The Facility will combust natural gas and will employ selective catalytic reduction (SCR) and an oxidation catalyst to reduce emissions.

On November 7, 2003, EFSEC issued the draft PSD permit for public review and comment. On December 21, 2004, after providing an opportunity for public comment and a public hearing, EFSEC approved the Permit. On January 11, 2005, EPA approved the Permit. On February 4, 2005, Ms. Cathy Cleveland (''Petitioner'') petitioned the EAB for review of the Permit.

What Did the EAB Decide?

Petitioner, acting *pro se*, raised the following issues on appeal: (1) The Permitting Authorities failed to protect Peace Arch Park, a Class I area; (2) the Permitting Authorities failed to properly evaluate particulate matter (''PM'') emissions from the Facility and failed to consider the health impacts related to PM; (3) the Permitting Authorities failed to properly model the ambient air quality; (4) the National Ambient Air Quality Standards (''NAAQS'') designation was incorrectly identified in the Permit; (5) EPA's recommended nitrogen oxide (''NO_x'') limit was not included in the Permit; and (6) the Memorandum of Understanding (''MOU'') between BP and the Province of British Columbia was missing from the Permit attachments.

The EAB denied review of the following three issues because these issues were not raised during the public comment period on the draft Permit or during the public hearing on the draft Permit: (1) the Permitting Authorities failed to protect Peace Arch Park, a Class I area; (2) the Permitting Authorities failed to properly model the ambient air quality; and (3) the NAAQS designation was incorrectly identified in the Permit. The EAB further concluded that the Permitting Authorities properly considered the impacts of emissions of particulate matter less than 10 microns (''PM_{10}'') and particulate matter less than 2.5 microns (''$PM_{2.5}$''). Moreover, the EAB found that Petitioner failed to demonstrate that the Permitting Authorities committed clear error in adopting a NO_x limit of 2.5 parts per million (''ppm'') rather than 2.0 ppm. Last, the EAB concluded that Petitioner failed to demonstrate that the Permitting Authorities committed clear error by failing to include the MOU between BP and the Province of British Columbia in the administrative record. For these reasons, the EAB denied review of the petition for review in its entirety.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. This notice constitutes notice of the final agency action denying review of the PSD Permit and consequently, notice of the Permitting Authorities' issuance of PSD Permit No. EFSEC/2001–02 to BP. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: August 1, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 05–17027 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7960–6]

Notice of Prevention of Significant Deterioration Final Determination for Cardinal FG Company

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of final action.

SUMMARY: This document announces that on March 22, 2005, the Environmental Appeals Board (''EAB'') of EPA denied review of a petition for review of a Prevention of Significant Deterioration (''PSD'') permit (''Permit'') that the State of Washington's Department of Ecology (''Ecology'') issued to Cardinal FG Company (''Cardinal'') for construction and operation of a flat glass production plant (''Facility'') near Chehalis, Washington. The Permit was issued pursuant to 40 CFR 52.21. Ecology has the authority to

issue PSD permits pursuant to the ''Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 10 to the State of Washington Department of Ecology,'' dated March 28, 2003 (''PSD Delegation Agreement''). The PSD Delegation Agreement was entered into pursuant to 40 CFR 52.21(u).

DATES: The effective date of the EAB's decision is March 22, 2005. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act (''CAA''), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of August 26, 2005.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101. To arrange viewing of these documents, call Dan Meyer at (206) 553–4150.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, EPA, Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Is EPA Taking?
B. What Is the Background Information?
C. What Did the EAB Decide?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit issued by Ecology pursuant to the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 650 ton-per-day flat-glass production plant located approximately five miles south of Chehalis, Washington. The Facility will employ the ''3R Process'' to limit carbon monoxide (''CO'') and nitrogen oxides (''NO_X'') emissions from its natural gas-fired glass furnace.

On July 23, 2004, Ecology issued the draft Permit for public review and comment. On October 6, 2004, after providing an opportunity for public comment and holding a public hearing, Ecology issued the final Permit to Cardinal. On November 5, 2004, the Olympia and Vicinity Building and Construction Trades Council (''Petitioner'') petitioned the EAB for review of the Permit.

C. What Did the EAB Decide?

Petitioner raised the following issues on appeal: (1) Ecology improperly rejected ''oxy-fuel technology'' as technically infeasible to control CO and NO_X emissions from the Facility's glass furnace, (2) Ecology failed to conduct a cost-effective analysis of oxy-fuel for limiting NO_X and CO emissions, (3) Ecology's best available control technology (''BACT'') emission limits for the Facility's glass furnace should be more stringent, and (4) Ecology failed to conduct a BACT analysis for the Facility's ''trackmobile.''

The EAB concluded that Petitioner failed to demonstrate that Ecology committed clear error in eliminating oxy-fuel as BACT due to concerns regarding its technical feasibility. Moreover, the EAB found that Ecology's determination regarding the issue of technical feasibility was sufficient to eliminate oxy-fuel as BACT without conducting a full cost effectiveness analysis. The EAB further concluded that the Petitioner failed to demonstrate that Ecology committed clear error in adopting NO_X and CO emission limits, rather than the lower limits suggesting by the Petitioner. Last, the EAB concluded that Ecology correctly determined that the trackmobile is not subject to PSD review because the trackmobile does not fall within the statutory definition of ''stationary source'' under CAA section 302(z), 42 U.S.C. 7602(z). For these reasons, the EAB denied review of the petition for review in its entirety.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. This notice constitutes notice of the final agency action denying review of the PSD Permit and consequently, notice of Ecology's issuance of PSD Permit No. PSD–03–03 to Cardinal. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register.** Under section 307(b)(2) of the CAA, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: August 11, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 05–17028 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7960–7]

Notice of Prevention of Significant Deterioration Final Determination for Sumas Energy 2 Electric Generating Facility

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that on May 26, 2005, the Environmental Appeals Board (''EAB'') of EPA denied review of a petition for review of a Prevention of Significant Deterioration (''PSD'') permit amendment (''Permit Amendment'') that EPA, Region 10 and the State of Washington's Energy Facility Site Evaluation Council (''EFSEC'') issued to Sumas Energy 2, Inc. (''SE2''). The Permit Amendment extends the original PSD permit (''Original Permit'') issued to SE2 for construction and operation of the SE2 electric generating facility (''Facility''). The Permit Amendment was issued pursuant to 40 CFR 52.21.

DATES: The effective date of the EAB's decision is May 26, 2005. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act (''CAA''), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of August 26, 2005.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101. To arrange viewing of these documents, call Pat Nair at (208) 378–5754.

FOR FURTHER INFORMATION CONTACT: Pat Nair, EPA Region 10, Idaho Operations Office, Office of Air, Waste and Toxics, 1435 North Orchard Street, Boise, ID 83706.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Is EPA Taking?
B. What Is the Background Information?
C. What Did the EAB Decide?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit Amendment issued by EPA Region 10 and EFSEC (''Permitting Authorities'') pursuant to 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 660-megawatt natural gas-fired combined cycle electric generation facility located in Sumas, Washington, about one-half mile south of the Canadian border. The Facility will combust only natural gas and will employ selective catalytic reduction (''SCR'') and catalytic oxidation technology.

Both the Province of British Columbia (''Province'') and Environment Canada, Canada's national environmental protection agency, filed petitions for review challenging the issuance of the Original Permit. On September 6, 2002, the Permitting Authorities jointly issued the Original Permit to SE2 pursuant to section 165 of the CAA, 42 U.S.C. 7475, 40 CFR 52.21, and the terms and conditions of EFSEC's delegation of authority from EPA Region 10 under 40 CFR 52.21(u).

On March 25, 2003, the EAB issued an order that denied the petitions for review in part and remanded in part to correct a typographical error that was inadvertently retained from the draft permit. The Original Permit subsequently became effective on April 17, 2003 and remained in effect until October 17, 2004.

On June 1, 2004, SE2 applied to the EFSEC for an extension of the Original Permit. On January 11, 2005, after providing an opportunity for public comments and holding a public hearing, EFSEC approved the Permit Amendment. On January 21, 2005, EPA approved the Permit Amendment. The Permit Amendment authorizes an 18-month extension of the Original Permit.

Subsequent to issuance of the Permit Amendment, the Province petitioned the EAB for review of the Permit Amendment.

C. What Did the EAB Decide?

The Province raised five main issues in its petition for review: (1) SE2's application for permit extension was untimely; (2) SE2's application lacked the required construction schedule; (3) the best available control technology (''BACT'') re-analysis for startup and shutdown emissions was incomplete; (4) the BACT analysis for nitrogen oxide (''NO_X'') emissions was inadequate; and (5) the Permit Amendment should not have been granted for an 18-month period.

The EAB denied review of the Province's petition for review in its entirety. First, the EAB concluded that the Permitting Authorities did not err in concluding that SE2's permit extension application was filed in a timely manner. Specifically, the EAB found that SE2 was not required to submit the permit extension application six months before expiration of the Original Permit. Second, the EAB found that the Province failed to demonstrate that the Permitting Authorities clearly erred in determining that SE2 provided a construction schedule in its application. Third, the EAB determined that the Permitting Authorities conducted a complete BACT re-analysis for startup and shutdown emissions by reviewing the Original Permit BACT analysis for these emissions and concluding that there was no new information that would warrant any changes to the analysis. Moreover, the EAB concluded that the Province failed to demonstrate why the Permitting Authorities' BACT analysis for NO_X emissions was in error. Finally, the EAB found that the Permitting Authorities had discretion to grant an 18-month extension of the Original Permit and the Provice failed to show why the Permitting Authorities' decision to grant an 18-month extension was in clear error. For these reasons, the EAB denied the Province's petition for review of the Permit Amendment in its entirety.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit decision is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. This notice constitutes notice of the final agency action denying review of the Permit Amendment and consequently, notice of the Permitting Authorities' issuance of PSD Permit No. EFSEC/2001–02 Amendment 1 to SE2. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought by filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: August 1, 2005.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 05–17029 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7960–3]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action and response to comment.

SUMMARY: In a **Federal Register** notice issued on October 9, 1996, the Environmental Protection Agency (''EPA'') requested comment on how it calculates the economic benefit that regulated entities obtain as a result of violating environmental requirements. EPA makes this calculation as a part of establishing an appropriate penalty for settlement purposes. The Agency's policy is that any civil penalty should at least recapture the economic benefit the violator has obtained through its unlawful actions. Because enforcement staff typically use the BEN (short for benefit) computer model to perform the economic benefit calculations, the Agency requested comments on the BEN model as well as the larger benefit recapture issues. In a subsequent **Federal Register** notice issued on June 18, 1999, EPA responded to the comments on the October 1996 **Federal Register** notice; provided advance notice of the changes EPA proposed to make to its benefit recapture approach and the BEN computer model; and requested a second round of comment of those proposed changes. This notice responds to the comments on the June 1999 notice and contains the changes EPA will implement in its benefit recapture program.

ADDRESSES: The Agency has dedicated a page of its website to the computers models the enforcement program uses to addresses benefit recapture as well as ability to pay claims and the evaluation of the costs of supplemental environmental projects (SEP's). The web address for those models is: *www.epa.gov/compliance/civil/econmodels/index.html.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Jonathan Libber, Office of Civil Enforcement, Special Litigation and Projects Division, at (202) 564–6102, or through electronic

mail at *libber.jonathan@epa.gov.* Government users (Federal, State, or local) can also obtain assistance with the model through the Agency's toll-free enforcement economics helpline at (888) ECONSPT or through electronic mail at *benabel@indecon.com.*

SUPPLEMENTARY INFORMATION: In EPA's October 1996 **Federal Register** notice, the Agency was considering changes in three areas: (1) Broad economic benefit recapture issues; (2) the BEN computer model's calculation methodology; and (3) improving the BEN model's user-friendliness. In regard to the broad economic benefit recapture issues, the Agency sought out any legitimate alternatives to BEN, but found none. In addition, EPA solicited comments on the best way to determine the economic benefit from the violator's illegal competitive advantage. The comments confirmed our initial thoughts that a model to handle such calculations was infeasible. The Agency has instead developed a draft conceptual framework document for such cases, and has initiated a peer review process by its Science Advisory Board to examine this type of benefit.

With regard to the BEN model's calculation methodology, the Agency is making eight sets of changes that should improve the model's precision and function. Although the combined effect of these changes will affect individual cases differently, the overall impact across all EPA's enforcement cases should be insignificant. The two most significant changes involve tailoring the discount/compound rate to the case and using a more precise inflation adjustment. The new BEN model tailors the discount rate to the period of violation through the present, which the prior version of the model was incapable of doing. The new BEN model also adjusts for inflation based on actual historical month-by-month inflation data, whereas the prior version simply applied one single average rate for both past inflation and projected inflation. All of these changes reflect the Agency's consideration of both rounds of public comments, as well as an academic peer review that the Agency completed in January of 2004. These reviews should be available by within the next few months on the Agency's computer models web page (see **ADDRESSES** section above). Electronic copies of the BEN computer model (which includes a comprehensive help system) can be downloaded from that same site.

The major change in improving the BEN model's user-friendliness is that EPA has moved the model from the old DOS operating system to the Windows environment. This should address those concerns that the model was cumbersome. We have also established a helpline to assist enforcement personnel from Federal, State and local governments in their use of the model.

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I. Background

A. Overview

One of EPA's most important responsibilities is to ensure that regulated entities comply with Federal environmental laws. These laws—and their implementing regulations—set minimum standards for protecting human health and achieving environmental protection and for achieving environmental protection goals, such as clean air and clean water. EPA upholds these laws through vigorous enforcement actions that seek to correct the violations and appropriately penalize violators.

A cornerstone of the EPA's civil penalty program is at least recapturing the economic benefit that a violator may have gained from illegal activity. Economic benefit recapture helps level the economic playing field by preventing violators from obtaining an unfair financial advantage over their competitors who make the necessary expenditures for environmental compliance. Penalties also serve as incentives to protect the environment and public health by encouraging prompt compliance with environmental requirements and the adoption of pollution prevention and recycling practices. Finally, appropriate penalties help deter future violations by both the penalized entity and by similarly situated regulatees.

EPA has promulgated a generic civil penalty policy, as well as specific penalty policies tailored to suit the needs of particular regulatory programs. For example, one civil penalty policy specifically addresses violations of the Clean Water Act. The civil penalties that EPA seeks usually embody two components: gravity and economic benefit. The gravity component reflects the seriousness of the violation and is generally determined through the application of the appropriate EPA civil penalty policy.

The economic benefit component, on the other hand, focuses on the violator's economic gain from noncompliance, *i.e.*, the extent to which the violator is financially better off because of its noncompliance. This economic benefit can accrue to the violator in three basic ways: (1) Delaying necessary pollution control expenditures; (2) avoiding necessary pollution control expenditures; and/or (3) obtaining an illegal competitive advantage. The term ''illegal competitive advantage'' is a broad catch-all category for economic benefit that goes beyond that derived from the mere delay and/or avoidance of pollution control expenditures. For example, the violator might have sold a product that is entirely illegal (and could not have been produced legally by incurring any pollution control expenditures).

The Agency designed the BEN computer model in 1984 to calculate the economic benefit from these first two

types of economic gain for settlement purposes. BEN may not be appropriate for all cases, and EPA's regional offices may use alternative approaches that produce reasonably accurate benefit calculations. For example, the pattern of necessary pollution control expenditures might be so complicated that a customized spreadsheet computation would be more appropriate than BEN. Alternatively, the pattern of expenditures might be so simple that a mere table in a word processing document would suffice. Nevertheless, the Agency believes that in the vast majority of cases BEN is by far the best approach available for calculating economic benefit derived from delayed and/or avoided costs.

The Agency does not have a computer model for calculating the benefit gained from an illegal competitive advantage. EPA considers such gains on a case-by-case basis.

B. EPA Policy and Guidance on Recapturing the Economic Benefit of Noncompliance

Since the BEN computer model's development in 1984, EPA staff have used BEN extensively in generating penalty figures for settlement purposes. These figures reflect the economic benefit a violator derived from delaying and/or avoiding compliance with environmental statutes.

1. Policy Background

Calculating a violator's economic benefit using the BEN computer model is usually the first step in developing a civil settlement penalty figure under the Agency's Policy on Civil Penalties (PT.1–1) February 16, 1984, and A Framework for Statute-Specific Approaches to Penalty Assessments (PT.1–2) February 16, 1984. The Agency developed the BEN computer model to assist in fulfilling one of the main goals of the Policy on Civil Penalties: to recover, at a minimum, the economic benefit derived from noncompliance.

The BEN computer model is a tool that is primarily intended to be used in calculating economic benefit for purposes of developing a settlement penalty. In presenting economic benefit testimony at a judicial trial or in an administrative hearing, the Agency relies on an expert in financial economics to provide an independent analysis of the economic benefit the violator obtained from its violations, reflecting the expert's own analytical approach as applied to the particular facts of that case. Use of an expert in a trial or hearing allows the parties the opportunity to examine more closely the analysis applied to the facts at issue, since a computer model itself cannot be deposed or cross-examined.[1]

2. BEN Calculates the Economic Benefit From Delayed and Avoided Pollution Control Expenditures

The BEN model calculates the economic benefit from delaying and/or avoiding required environmental expenditures. Delayed costs can include capital investments in pollution control equipment, remediation of environmental damages (*e.g.*, removing unpermitted fill material and restoring wetlands), or one-time expenditures required to comply with environmental regulations (*e.g.*, establishing a reporting system, or purchasing land on which to site a wastewater treatment facility). Avoided costs typically include operation and maintenance costs and/or other annually recurring costs (*e.g.*, off-site disposal of fluids from injection wells), but can occasionally include capital investments or one-time expenditures. BEN does not calculate the economic benefit that takes the form of illegal competitive advantage. For example, the BEN model is not the appropriate method for calculating the economic benefit derived from selling DDT on the black market to U.S. pesticide applicators.

3. Current Model Usage and Applicability

The BEN model can be used in all cases that have delayed and/or avoided compliance costs. (The only exception is Clean Air Act Section 120 enforcement actions, which require the application of a specific computer model.) EPA designed BEN to be easy to use for people with little or no background in economics, financial analysis, or computers, although it is also useful for those with such backgrounds. Because the program contains standard default values for many of the variables needed to calculate the economic benefit, BEN can be run with only a small number of required inputs from the user. The program also allows the user to replace those standard values with case-specific information. The table below lists the inputs to the BEN model, both the required inputs and also those inputs with standard default values that may be modified.

The BEN model can calculate economic benefit for many types of organizations: corporations, partnerships, sole proprietorships, not-for-profit organizations, federal facilities, and municipalities. BEN customizes its standard values to the entity type, as well as other aspects of the case. The BEN inputs listed in the table are discussed in detail in the model's help system.

Inputs for BEN

Required Inputs:

—Descriptive Information (case name, office/agency, analyst name)
—Entity Type and State
—Competitive Advantage Questionnaire
—Penalty Payment Date
—Capital Investment (cost estimate and estimate date)
—One-Time Nondepreciable Expenditure (cost estimate and estimate date)
—Annually Recurring Costs (cost estimate and estimate date)
—Date of Initial Noncompliance
—Date of Compliance

Inputs with Standard Default Values that May be Modified:

—Year-Specific Marginal Income Tax Rates
—Discount/Compound Rate
—Cost Index for Inflation (specified separately by compliance cost component)
—Consideration of Future Capital Replacement
—Useful Life of Capital Equipment
—Delayed v. Avoided (specified separately for capital and one-time nondepreciable)
—Tax Deductibility (of one-time nondepreciable expenditure)
—Specific Cost Estimates (for on-time and delay scenarios)

C. How a Firm Obtains an Economic Benefit From Delaying and/or Avoiding Compliance Costs

An organization's compliance with environmental regulations usually entails a commitment of financial resources, both initially (in the form of a capital investment or one-time expenditure) and over time (in the form of continuing, annually recurring costs). These expenditures should result in better protection of public health or environmental quality, but they are unlikely to yield any direct economic benefit (*i.e.*, net gain) to the organization. (Otherwise, and with the assumption of some measure of foresight, the organization should have already committed the financial

[1] EPA designed the BEN model as a flexible tool primarily for use in settlement negotiations; it is not used, nor was it ever intended to function, as a rule. An expert witness testifying for the government may use the new Windows version of BEN as appropriate, but the responsibility to determine the economic benefit—as well as explain and defend the results—still resides with the expert. That expert may choose to use whatever analytical tool (*e.g.*, customized computer spreadsheets, the BEN model, or even a calculator) deemed appropriate for the particular calculations necessary in the case.

resources, even in the absence of such environmental regulations.) If these financial resources are not used for compliance, then they presumably are invested in projects with an expected financial return to the organization. This concept of alternative investment—that is, the amount the violator would normally expect to make by investing in something other than pollution control—is the basis for calculating the economic benefit of noncompliance.

In implementing EPA's penalty policies, the Agency invokes its authority to assess penalties to remove or neutralize the economic incentive to violate environmental regulations. In the absence of enforcement and appropriate penalties, an organization's narrowly construed economic interest would usually dictate delaying the commitment of funds for compliance with environmental regulations and avoiding certain associated costs, such as operation and maintenance expenses.

1. The Economic Benefit Components That the BEN Model Measures

A violator may gain an economic benefit from either delaying and/or avoiding compliance costs. By delaying compliance, the violator can earn a return on the funds that should have been committed to the capital investment or one-time expenditure required for pollution control compliance. In other words, violators have the opportunity to invest their funds in projects other than those required to comply with environmental regulations. These other investments are expected to generate a financial return, as opposed to the required pollution control investments that typically generate no direct financial return for a company. Thus, by delaying compliance, the violator's economic benefit is the difference between investing in pollution control and investing in other projects.

A violator can also gain an economic benefit from avoiding pollution control costs. Avoided costs typically include the continuing, annually recurring costs that a violator would have incurred had it complied with environmental regulations on time (*e.g.*, the costs of labor, raw materials, energy, lease payments and any other expenditures directly associated with the operation and maintenance of pollution control equipment). Annual costs are thereby avoided entirely, as opposed to capital investments and one-time expenditures that are usually only delayed.[2] Thus, the violator's economic benefit from avoided costs is the sum of the total avoided annual costs plus the return that could be expected on the funds that were used for projects other than pollution control.

2. BEN and Cash Flow Analysis

The BEN model calculates economic benefit by focusing on the effect that delayed and/or avoided pollution control costs have on an entity's cash flows. Cash flow analysis is a standard and widely accepted technique for evaluating costs and investments. In essence, cash flow calculations focus on the real, ''out-of-pocket'' cash effects resulting from an expenditure.[3] Three important factors that enter into BEN's cash flow analysis are inflation, taxation, and the time value of money.

a. Inflation

BEN first requires users to enter a single cost estimate for the capital investment and another single cost estimate for the one-time nondepreciable expenditure. Then, to adjust for inflation, BEN extrapolates from this single cost estimate to create separate estimates for the hypothetical cost of complying on-time and the actual cost of complying in a delayed fashion. Similarly, BEN extrapolates from the user's annually recurring cost estimate to a complete set of cost estimates for every year during the noncompliance period. (The BEN model's help system provides a more detailed discussion of these inflation adjustments.) These adjusted cost estimates form the basis for the on-time and delay scenarios: The actions and associated costs that would have been necessary for hypothetical on-time compliance, and the actions and associated costs that were necessary for the actual delayed compliance.

b. Taxation

The BEN model computes economic benefit on an after-tax basis, since environmental expenditures can reduce income tax liability.[4] Depreciation (from capital investments), one-time expenditures, and annual costs all effectively reduce taxable income and thereby reduce income tax payments. To account for these tax effects, BEN calculates the economic benefit using after-tax cash flows for the on-time compliance and delayed compliance scenarios.

c. Time Value of Money

A third factor relates to the timing of the cash flows, because cash flows occurring in different years are not directly comparable. The fundamental financial concept of the time value of money is based on the principle that a dollar today is worth more than a dollar a year from now, since today's dollar can be invested immediately to earn a return over the coming year. (Alternatively, a dollar last year is worth more than a dollar today because investment opportunities existed for last year's dollar.) Therefore, the earlier a cost (or benefit) is incurred, the greater its economic impact.

BEN accounts for the time value of money by adjusting all estimated cash flows to their present value equivalents. BEN first discounts back to the initial noncompliance date all cash flows from the on-time and delay scenarios. The initial economic benefit as of this date is simply the difference in the present values of these two scenarios. Finally, BEN compounds the initial economic benefit forward from the noncompliance date to the penalty payment date.

To adjust the cash flows for both discounting and compounding, BEN uses a discount or compound rate (depending on the direction of the adjustment) that reflects the time value of money. The selection of the appropriate rate, and the structure of the discounting and compounding methodology, is a significant issue in the BEN model and will be addressed later in this notice. (The model's help system provides a more detailed discussion of the discounting and compounding that BEN performs for its present value adjustments.)

II. Final Changes

In its October 9, 1996, **Federal Register** notice, the Agency sought comment on three categories of issues: (1) Broad economic benefit recapture questions, (2) the BEN model's calculation methodology and assumptions, and (3) the model's user-friendliness. The June 18, 1999, notice provided responses to these comments, as well as advance notice of EPA's proposed changes to the BEN model. The June 1999 notice also invited a second round of public comments, especially on EPA's proposed changes. EPA also conducted a peer review by academic experts in financial economics during the spring of 2003 on the draft proposed changes to the model. This peer review of the model changes was

[2] Even capital investments and one-time expenditures may be avoided on occasion. The typical situation where this happens is when a violator shuts down a particular operation rather than install required pollution control equipment.

[3] Thus, noncash ''paper'' expenses, such as depreciation, are considered only to the extent that they affect cash flow.

[4] The term environmental expenditures refers to firms' compliance costs and does not include the payment of civil penalties. Civil penalties are in almost all cases not deductible.

specifically requested by the United States Senate.[5]

The first area in which we invited comment covered some fundamental questions that the benefit recapture approach has raised. Is there an alternative to the BEN model that would be both easier to use and at least as accurate in calculating the economic benefit of delayed and/or avoided pollution control expenditures? How should EPA evaluate the economic benefit that companies receive as a result of any illegal competitive advantage stemming from noncompliance?

Second, we invited comment on the BEN model's calculation methodology. While the Agency is confident that the BEN model's overall approach is theoretically sound, we welcomed constructive and documented comment on alternative methodologies. In particular, EPA has been aware of substantial differences of opinion with respect to inflation adjustments and discounting/compounding. EPA requested comment on the BEN model's calculation methodology, or any other aspect of the model's assumptions or methodology.

Third, we requested comment on the model's user-friendliness. The Agency had heard concerns that the model is too difficult to use, particularly regarding the necessary data acquisition. Because EPA had never been presented with any concrete evidence in support of these assertions, the Agency wanted either to substantiate the problems and address them or to put these issues to rest.

In the following sections, we address the final changes that EPA is making in each of the areas on which we requested comment. Note that final changes incorporate EPA's consideration not only of the public comments but also of the previously mentioned academic peer review that EPA completed in January of 2004.

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

a. Background

EPA requested comment on whether anyone had an approach that would be simpler and at least as accurate as BEN in calculating the economic benefit from delayed and/or avoided pollution control expenditures. EPA designed the BEN model to calculate the economic benefit of noncompliance in settlement of the vast majority of its civil penalty enforcement cases. Although BEN has served this purpose effectively, the Agency recognizes that it should be improved or even replaced if a better alternative exists or could be developed easily. This concern is particularly relevant because an increasing number of State and local government enforcement personnel use the BEN model regularly. Any alternative approach must meet EPA's policy objective of ensuring that violators are put on an even financial footing with those regulated entities that comply on time. Alternatives must also be reasonably accurate, simple to use, and readily understandable to the vast majority of the BEN model's users—Federal, State and local government enforcement officials who usually have limited knowledge of financial economics.

b. Final Changes

Many commenters expressed various criticisms on different aspects of the BEN model. But these criticisms focused on suggestions for improving BEN. No commenter proposed an alternative approach to a stand-alone computer model that performs net present value calculations. Therefore, the Agency will continue its use of BEN, although it will also implement significant revisions (see following sections).

On a related topic, two commenters questioned the entire benefit recapture framework. Although one comment along these lines was somewhat unclear, the other comment presented a comprehensive approach for basing penalties on the lesser of economic benefit or social cost (*i.e.*, environmental damages). Under this proposal, if a violator gained a significant economic benefit from its violations but caused only trivial environmental damage (as monetized through some unspecified economic methodology), then the penalty would be commensurately trivial. The Agency finds this approach entirely unacceptable in the context of enforcing regulatory requirements for individual violators. The appropriate context for considering social costs is in the process of formulating proposed regulations. Penalties based on social costs (when less than economic benefit) would provide an implicit yet clear incentive to violate the law if a company anticipated that its economic benefit would exceed the consequent measurable environmental damage. Further, such an approach would be fundamentally unfair to those firms that resisted the temptation to violate the law. In addition, quantifying environmental damages in a monetary measure is an exceedingly difficult analytical problem. Even if this fundamentally different approach was theoretically sound, it would be infeasible for the vast majority of enforcement cases.

2. Illegal Competitive Advantage

a. Background

Since the issuance of EPA's Policy on Civil Penalties in 1984, the Agency has maintained that any given penalty should be structured to recover—at a minimum—the economic benefit a violator has enjoyed as a result of its noncompliance. That 1984 policy recognized that the benefit would be based on delayed costs, avoided costs and illegal competitive advantage. In addition to this economic benefit component, EPA assesses a gravity component that reflects the seriousness of the violation. This gravity component is designed to ensure that the penalty puts the violator in a worse position than those in the regulated community who complied with the law. The economic benefit component of EPA's civil penalty policy focuses specifically on identifying and recovering the gain to a violator in order to remove any economic incentive to violate environmental regulations.

The BEN model calculates the economic benefit from delaying and/or avoiding required environmental expenditures. The economic benefit that arises from situations other than the delay and/or avoidance of pollution control expenditures is broadly termed ''illegal competitive advantage,'' which BEN is incapable of measuring. The essential distinction between these two types of economic benefit is that in the illegal competitive advantage situation, the violator's noncompliant actions have allowed (or will allow) it to attain a level of revenues that would have been unattainable had it always been in compliance. In delayed and avoided costs situations, the implicit assumption is that the revenues from a noncompliant and compliant state are identical. Consequently, BEN focuses exclusively on a violator's pollution control costs and does not require any data on the violator's revenues.

In either type of situation (BEN-type economic benefit or illegal competitive advantage), the fundamental definition of economic benefit is still the same: The economic benefit is the difference in the net present values of the compliant/on-time and noncompliant/delay scenarios (*i.e.*, the actions and cash flows—both historical and possibly also future—associated with the hypothetical compliance, and the actual noncompliance). But in the cases

[5] Senate Report No. 106–410 (2000) at page 81.

amenable to BEN, the violator's revenues from the compliant and noncompliant states simply cancel each other out, allowing BEN to measure economic benefit through a calculation involving only the costs that would have differed had the violator been in compliance. Illegal competitive advantage encompasses all situations in which the revenues do not cancel out each other. Since the revenues were higher in the noncompliant state than they would have been in a compliant state, more detailed research and analysis is necessary, going beyond the scope of the BEN model.

The BEN model's widespread application is made possible by its simplifying assumption regarding revenues, obviating the need for a detailed examination of a violator's business records or competitive market situation. But in some cases, this assumption is not valid.[6] In such cases, the violator would not have been able to generate a given level of revenues were it not for its noncompliance. In those cases, EPA's policy is to seek to recapture the economic benefit based on the violator's illegal competitive advantage.

b. Final Changes

The Agency received many comments on illegal competitive advantage. The first round of comments focused mainly on the feasibility of developing a stand-alone computer model analogous to BEN (or an add-on module to BEN) that could easily and reliably determine the economic benefit from the widely varying examples of illegal competitive advantage. The broad consensus was that no such model was feasible, and the Agency agrees. Without BEN's simplifying assumption that the violator's revenues from the on-time and delay scenarios cancel out each other, no ''one-size-fits-all'' computer model can analyze the range of likely situations.

The second round of comments the Agency received on illegal competitive advantage mainly focused on the June 1999 notice's proposed questions for BEN's module and the illegal competitive advantage examples. But since the ICA concept is currently under review by EPA's Science Advisory Board (SAB), OECA will not put any ICA questions in the revised BEN model.

After careful review of the comments, and in light of the fact that the SAB is currently reviewing the ICA issues, EPA has decided against publishing at this time any formal guidance delineating detailed analytical steps. While EPA remains committed to recapturing economic benefit based on illegal competitive advantage, if appropriate, quantifying illegal competitive advantage requires a careful examination of the facts of the particular case, and EPA believes it is premature to try to establish formal guidance in light of these case-specific issues. Similarly, the Agency does not envision providing a specific formula for calculating a benefit component in such cases.

In summary, EPA will continue to seek the recovery of illegal competitive advantage in cases where the BEN model is incapable of fully assessing the extent to which a violator is financially better off as a result of its noncompliance. The proper evaluation of illegal competitive advantage will involve verifying that the use of the BEN model alone is inappropriate to the case-specific facts, and then formulating an analytical approach that captures the extent of the violator's gain.

B. The BEN Model's Calculation Methodology

Over the years, BEN has received occasional criticism for alleged flaws in its calculation methodology, particularly regarding the model's inflation adjustments and discounting/compounding. The Agency requested substantive comments on how the BEN model handles these two issues. In addition, EPA invited comment on all aspects of BEN's calculation methodology. The Agency also asked commenters to address whether their proposed changes would add any complexity to the computer model and, if so, why the benefit of the change justified the added complexity.

1. Depreciation Method

a. Background

The BEN model calculates depreciation for capital investments, since the tax deduction for accounting depreciation charges provides a real after-tax positive cash flow to businesses.[7] BEN used to calculate depreciation using a five-year straight-line methodology for capital investments made before January 1, 1987, and a seven-year Modified Accelerated Cost Recovery System for capital investments made after January 1, 1987. These assumptions represent the most rapid depreciation periods available for typical pollution control investments, thereby producing the positive depreciation cash flow effects as early as possible. These particular depreciation methods generally result in a conservative economic benefit calculation (*i.e.*, lower than would otherwise be calculated) because they minimize out-of-pocket costs to the violator. Therefore, BEN is often producing economic benefit figures that are very conservative.[8]

For capital equipment that has a very short useful life, the selection of alternative depreciation schedules might be available and also more beneficial to a business. In unusual cases where the violator can demonstrate that an alternative depreciation schedule would be both available and beneficial, more detailed calculations by a financial analyst in lieu of the BEN model may be necessary.

b. Final Changes

EPA received no comments on its proposal in the June 1999 notice that although a revised BEN model could conceivably allow alternative depreciation schedules, the drawbacks of the added complexity and potential user confusion might outweigh the gains from addressing a rare circumstance. Nevertheless, EPA has devised a relatively simple means for BEN to apply shorter depreciation schedules when the user enters a capital equipment useful life less than 10 years (as opposed to the default 15 years).

The specification of shorter depreciation schedules will ensure that BEN does not overestimate economic benefit in the relatively rare cases that involve such short-lived capital equipment. Once the shorter useful life has been specified, the alternative depreciation schedule will not require any additional input from the user. BEN will also include a provision to account for legislation that allows for depreciation bonuses over certain periods. This provision will key off the previously required noncompliance and compliance dates, and it therefore will

[6] The Agency suspects that this relationship may be reversed for cases involving wetlands. Although the evidence is largely anecdotal, most wetlands cases encompass violations that allowed a violator to engage in operations that would not have been feasible but for the violation. Therefore, in evaluating wetlands cases, the Agency will be particularly sensitive to the possible presence of illegal competitive advantage.

[7] The IRS does not allow companies to write off completely a capital investment in the year of purchase. Companies must spread the expense of the investment over several years using the appropriate depreciation schedule.

[8] The IRS requires that many types of pollution control equipment be depreciated over a longer period than assumed in the BEN model. Were EPA to tailor the depreciation to account for that longer period, the result would be a higher economic benefit calculation.

not require any additional input from the user.

2. Tax Rates

a. Background

The DOS versions of BEN that were issued after 1993 used to apply three marginal tax rates: a rate for 1986 and before, one for 1987 through 1992, and one for 1993 and beyond. Users could accept the standard values—which incorporate national averages of State tax rates—or modify the inputs to reflect specific State values.[9]

b. Final Changes

EPA did not receive any objections to the June 1999 notice's proposal that the revised BEN model will require the user to enter the violator's State of operation, then automatically reference an internal database of State tax rates and perform the necessary calculations for the violator's combined Federal and State tax rate.[10] BEN will calculate the tax rate for each separate year of noncompliance, to allow for annual changes in the relevant State tax rate (even when the Federal rate remains constant). Users will have the additional option of entering year-by-year combined Federal and State rates in a spreadsheet-like format.[11]

Although these options may sound complex, the only data required of the user will be the violator's State. The other screens for additional data entry and modification will appear only to those users who selected such advanced options.

3. Differences in On-Time and Delay Scenarios

a. Background

The BEN model's baseline assumption is that the violator would have used the same technology and approach in the hypothetical on-time compliance as it did in the actual delayed compliance scenario. The only allowed differences are in the two scenarios' exact costs of compliance, which BEN adjusts for automatically in its inflation treatment. But technological, legal, or other relevant changes between the on-time and delay scenarios can conceivably alter the components of the compliance scenarios, increasing or decreasing the compliance costs by a rate other than general price inflation. Where the delay case costs are substantially less than the on-time case costs (*e.g.*, a technological breakthrough in control equipment), BEN will understate the benefit. Where the delay costs are substantially higher (*e.g.*, regulations become more stringent, but with ''grandfather'' clauses for already-compliant firms) BEN will overstate the benefit.

Where, in the unusual case, the on-time and delay compliance scenarios are significantly different, BEN's baseline assumption of two identical scenarios is inappropriate.[12] More sophisticated calculations are necessary.[13]

b. Final Changes

EPA received only one minor objection to the June 1999 notice's proposal that the revised BEN model allow users to enter separate on-time and delayed compliance costs. Although the standard operation of the revised model will still entail only a single compliance scenario, the new screens for additional data entry/modification of separate on-time vs. delay scenarios will be available to those users who select such advanced options. The availability of more advanced options will also enhance the model's ability to account for atypical situations such as valid pre-compliance expenditures and credits for salvaged capital equipment, thus decreasing the need for off-line calculations.

4. Capital Equipment Replacement

a. Background

One of the three components of compliance costs BEN analyzes is the capital investment, which represents depreciable pollution control equipment. As the name implies, depreciable equipment wears out with usage and the passage of time. BEN used to ask the user if the violator will need to replace the equipment at some point in the future. If the user specified that the investment in capital equipment is recurring, then the user could accept the standard value of 15 years for the useful life of the capital equipment, or enter another value.

If the capital equipment does need to be replaced in the future, then the violator is financially better off from its delayed compliance in two distinct yet related ways: the violator has received a benefit in the past from delaying the initial purchase of the capital equipment, and will receive a benefit in the future from delaying the replacement of the capital equipment when that initial purchase wears out. For example, if a steel mill delays installation of a $1,000,000 baghouse for 5 years, it first obtains a benefit from delaying the purchase of that baghouse for 5 years. But when that baghouse needs to be replaced 15 years later, the violator's second baghouse is purchased 5 years later than it should have because the initial purchase lasted five years later than if it had complied on time.

b. Final Changes

Some commenters characterized any consideration of future replacement cycles as ''speculative,'' as these cycles have yet to occur in the typical case (because the noncompliance period is almost always shorter than the capital equipment's useful life). EPA agrees only to the extent that BEN does make an assumption about the future, but this assumption is essentially a baseline one: BEN assumes that future pollution control requirements will be neither more stringent nor more lax than current requirements, and that the cost of the replacement equipment will increase by no more and no less than the projected rate of inflation. Therefore, the Agency will retain the BEN model's default consideration of capital equipment replacement.

Some commenters argued that BEN should not offer infinitely recurring replacement cycles. The Agency notes that although modeling infinite cycles might at first seem excessive, all future costs are ''discounted'' back to their present values (see following sections for an explanation of discounting). Thus, the first replacement cycle typically has a relatively small impact on the benefit calculation.[14] The impact

[9] Tax rate modification can also reflect a business whose low net income entails a tax bracket other than the assumed highest bracket. Note that BEN's assumption of the highest marginal tax rate produces a lower economic benefit calculation than assuming a lower tax rate because a higher tax rate decreases the compliance costs' after-tax value. Since the model employs an after-tax cost in its analysis, the lower the tax, the higher the BEN result.

[10] The model will also offer the option of the national average of all the State tax rates for cases where the State in which the violator pays taxes is unclear.

[11] This option would allow users to account for, among other situations, a company whose profitability (and hence tax bracket) was highly variable over different years. (As noted before, BEN's assumption of the highest marginal tax rate throughout the noncompliance period results in a lower economic benefit estimate than would be produced by a more precise calculation of the violator-specific marginal tax rate.)

[12] The inexperienced user will become aware that a more sophisticated analysis is needed because there are two sets of cost figures, but only one place to put them. The more experienced user will just go directly to the ''Specific Cost Estimates'' option during data entry.

[13] A similar problem arises when no technologically feasible method of compliance is available. If the only possible compliance method that the Agency would have allowed is to cease all production, then this falls under the category of illegal competitive advantage, which by definition is beyond the scope of the BEN model.

[14] If the initial capital investment is $1 million and the equipment lasts for 15 years, then the first replacement cycle is still $1 million (assuming, for now, the lack of any intervening inflation). But since it is purchased 15 years later, the $1 million is discounted to a present value at, for example, 10

of later replacement cycles is almost negligible.

Some commenters, as well as academic peer reviewers, favored the approach of a finite number of replacement cycles (which the Agency initially proposed to adopt). But one peer reviewer pointed out that this approach runs into problems when the noncompliance period is very long, especially when it approximates the useful life of the capital equipment. For example, assume a 10-year compliance delay, coupled with a 10-year useful life. If BEN were to use one replacement cycle, the on-time scenario would include two capital equipment installations, covering the years 1 through 20. The delay scenario would also include two capital equipment installations, but run from years 11 through 30. BEN would implicitly be stating that the violator would need to have functional equipment in place for years 21 through 30 (*i.e.*, the delay scenario's replacement cycle), but that a company complying on-time need not do so (*i.e.*, since the cash flow analysis for the on-time scenario runs out only to the year 20).

Therefore, the revised BEN model will adopt this peer reviewer's solution by implementing the concept of economic depreciation, which essentially calculates the lease value of pollution control equipment. In other words, instead of modeling the on-time replacement capital investment and the subsequent depreciation tax shields, and comparing that to delayed replacement, the calculation models leasing the equipment over the period when the on-time equipment would have required replacement yet the delay equipment is still functional. The avoided lease cost, therefore, serves as a reasonable approximation of the economic benefit from the delayed replacement equipment installation, and also allows the two scenarios to the modeled out to the same end point. Furthermore, projections far into the future are no longer necessary, as the imputed lease cost is calculated only for the interim period when the on-time equipment would have required replacement yet the delay equipment is still functional.

This approach will add a few new cells on one of the pages in the BEN detailed printouts, yet allow the elimination of another entire page of calculations. It will also simplify the previous 0–5 replacement cycles optional input to a simple ''yes/no'' choice for the consideration of future capital replacement (with the default set to ''yes''). The previously included optional input for the future inflation rate (which applied only to replacement cycles in addition to the first one) will be eliminated.

5. Inflation Treatment

a. Background

The first step in the economic benefit calculation is to determine the compliance costs—for both the on-time and delay scenarios—as of the year in which they were actually incurred (or should have been incurred). Therefore, BEN adjusts the compliance costs from the date they were estimated to the date the costs will be incurred to account for the effects of inflation.

To adjust for inflation, BEN previously used a standard-value rate calculated from the prior ten years of inflation data from the Plant Cost Index (PCI) in the magazine Chemical Engineering. (The PCI is generally the cost index most relevant to the types of costs typically associated with pollution control technology.) This simple inflation rate adjusted the initial compliance cost estimates. BEN applied this simple inflation rate to the compliance cost figures in order to determine what compliance would have cost at the noncompliance date. Then BEN applied the same simple inflation rate to determine what the costs actually were (or will be) at the compliance date. Finally, the model used the same rate to go well into the future to determine what those costs will be for the capital equipment replacement cycles.

b. Final Changes

Despite the Agency's specific request for comment on BEN's inflation adjustment, we received almost none. The issues that the few commenters did raise were:

(1) The use of a single inflation rate for both actual and projected inflation,

(2) The basis for the actual inflation rate, and

(3) The basis for the projected inflation rate.

For actual historical inflation, the revised BEN model will adjust each cash flow automatically from the date of the cost estimate to the date on which it is incurred by referencing a look-up table of cost index values.[15] The default cost index will be the PCI. This particular index may not be perfectly appropriate for every single case, but we have yet to encounter any other cost index that would form a better basis for a standard value, nor did any commenters submit any specific nominations for a more suitable index.

The revised BEN model will also allow the user to override the PCI and instead specify different cost indices for different compliance components. The table below describes the alternative cost indices.

Abbr	Full name	Description	Typical applications
2.5%	2.5-percent constant inflation rate		Sensitivity tests; model testing.
CCI ..	Construction Cost Index	Constructions costs; based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber, 200 hrs. common labor.	General construction costs, especially where labor costs are a high proportion of total costs; often used for municipal wastewater projects.
ECI ...	Employment Cost Index	Employment costs	One-time nondepreciable expenditures or annual costs that are mainly labor
GDP	Gross Domestic Product price deflator	Economy-wide measure of price changes ...	A very broad, economy-wide measure of inflation is desired.
PCI ...	Plant Cost Index	Plant equipment and labor costs	Standard value.

percent, over 15 years. The first replacement cycle would only increase the benefit component by about 30%. The second replacement cycle is purchased 30 years later. Thus, the $1 million piece of equipment is discounted at the same 10 percent over 30 years. The economic benefit from the delay of that second replacement cycle would only increase the benefit component by about 7%.

[15] The model will not apply an explicit inflation *rate*, although an annualized rate could be imputed from the model's data. For example, suppose a $200 cost estimate from 1991 must be adjusted for inflation to the same day in 1992. The 1991 cost index value is 100, whereas the 1992 index value is 103. The calculation the model performs is $200 x 103 / 100 = $206 (*i.e.*, multiplying the original cost estimate by the ratio of the cost index values from the date on which the cost is actually incurred, and the date on which the estimate is made). The index change from 1991 to 1992 does represent an annual inflation rate of three percent (*i.e.*, 103 / 100 = 1.03 − 1 = 0.03), although the model would not directly apply this rate. The calculation that uses the ratio of the index values is both more precise and more simple than calculating multiple annual inflation rates over different periods for historical costs.

Abbr	Full name	Description	Typical applications
PPI ...	Producer Price Index	Representative producer costs	General costs for producers, not tied to industrial process equipment.

The user may also override BEN's inflation adjustments for the capital investment and one-time nondepreciable expenditure, and instead enter separate estimates for these compliance costs as of the noncompliance date and compliance date. This customized data entry could represent another alternative cost index, case-specific inflation assumptions, or entirely different actions for on-time and delayed compliance (as discussed in a previous section). For projected future inflation, the model will project all the cost indices forward in time at publically available, consensus-oriented forecasted rates.

The standard operation of the model will still entail absolutely no input whatsoever from the user who is satisfied with BEN's default values. The other screens for additional data entry and modification will appear only to those users who selected more advanced options.

6. Discount/Compound Rate

a. Background

Once the compliance cost estimates are adjusted for inflation and then for taxation, the BEN model must adjust these after-tax cash flows to a common present value as of the date of noncompliance. The difference between the two present values (of the on-time and delay scenarios) is the initial economic benefit as of the noncompliance date. BEN then compounds this initial economic benefit forward from the noncompliance date to the penalty payment date to determine the final economic benefit. A single rate adjusts all present values both backward and forward in time.[16] This section addresses only the calculation of BEN's standard value for this single discount rate, which was previously based upon a ten-year after-tax weighted average cost of capital (WACC), with the inputs representing averages across all industries.[17]

The WACC is the average of the cost of debt and the cost of equity, weighted by the portions of debt and equity out of total financing. The WACC is first calculated for each year, and then the prior version of BEN averaged these annual values over the most recent ten-year period. The (after-tax) cost of debt is the average return on corporate bonds averaged across all industries, and then multiplied by one minus the highest marginal corporate tax rate (Federal combined with an average of all States). The cost of equity is based upon the widely used Capital Asset Pricing Model (CAPM), and is equal to a risk-free rate component plus the expected equity risk premium (*i.e.*, the average since 1926 of each year's excess stock market return over the risk-free rate).

b. Final Changes

Based on the June 1999 notice's proposal and the lack of any objections, the revised BEN model will tailor the standard value discount rate to the period from the noncompliance date to the penalty payment date.[18] The standard value will reference a look-up table, averaging the annual values over the relevant years. Each individual annual calculation will be similar to the standard value's previous methodology.[19]

The model will also perform additional customizing in a similar automated fashion. Since BEN will have an input for the violator's State—thereby customizing the tax rate for compliance costs—that same customized tax rate will determine the after-tax debt cost component of the WACC. The model will even select the individual tax rate if the company is not organized as a C-corporation (as profits and losses from S-corporations, partnerships, and sole proprietorships flow through to the owners' individual tax returns).

The standard operation of the model will still entail absolutely no input whatsoever from the user who is satisfied with BEN's derived WACC for the discount/compound rate. Another screen to override BEN's derived rate will appear only to those users who selected such advanced options.

7. Discounting/Compounding Methodology

a. Background

As stated in the previous section, once the compliance cost estimates are adjusted for inflation, and then for taxation, the BEN model must adjust these after-tax cash flows to a common present value as of the noncompliance date. The difference between the two present values (of the on-time and delay scenarios) is the initial economic benefit as of the noncompliance date. BEN then compounds this initial economic benefit forward from the noncompliance date to the penalty payment date in order to determine the final economic benefit. BEN uses a single rate to adjust all present values both backward and forward in time. Because BEN uses the same rate for going both backward and forward, this calculation is computationally equivalent to bringing all cash flows—both past and future—directly to the penalty payment date at the WACC rate.

The comments fell into three categories. Some thought the WACC rate was too high and especially that the

[16] The Agency received many comments on the use of a single rate as opposed to two different rates. The notice addresses this issue in section II. B. 8, Discounting/Compounding Methodology.

[17] The discount rate standard value for not-for-profits is based upon municipal bond yields, averaged across the four investment-quality ratings of Aaa, Aa, A, and Baa. The only comment EPA received on the not-for-profit discount rate was a suggestion that municipal economic benefit be calculated using a discount rate for private entities that perform similar functions (*e.g.*, on a municipal Clean Water Act case, the discount rate would be the average WACC for privately owned wastewater treatment plants). However, because the Agency is trying to calculate the economic benefit that the municipality and its residents or rate payers have actually gained, the Agency prefers to use an estimation of the municipal government's opportunity cost of financing projects, which is equal to the interest rate on the municipality's bonds. This debt rate—which forms the basis for the BEN model's not-for-profit standard value discount rate—will almost always be substantially lower than the private-sector-equivalent cost of capital. The discount rate for Federal facilities is based upon the yields from five-year U.S. Treasury notes.

[18] Although the following discussion focuses on the for-profit discount rate, the tailoring of the discount rate to the relevant time period would also apply to not-for-profit entities.

[19] The revised BEN model will implement two relatively minor changes to the previous model's annual WACC calculation. First, the previous practice of applying the most recent figure for the expected equity risk premium to all prior years' calculations will be replaced with the figure that was actually available at the time for that specific year's calculation.

The second change is altering the horizon for the equity risk premium. The standard value previously combined the long-term Treasury security rate with the long-horizon equity risk premium, the latter being equal to the average of each year's stock market return minus the corresponding-maturity risk-free rate. Because the WACC calculation combines the equity risk premium with the risk-free rate of the same maturity that is used initially to calculate the premium, the issue of which horizon premium to use is largely moot. (The expected deviations of the resulting WACC will thereby be both small and nonsystematic.) The new calculation will switch to the intermediate-horizon risk premium (and the corresponding risk-free rate) as a simple compromise between the long-horizon and short-horizon.

compounding part of the calculation should be based on a risk-free rate. Some agreed with EPA's approach. Others commented that EPA's discount/compound rate was too low and should instead be based on financing pollution control investments with 100% equity.

The first group of commenters claimed that BEN's use of a WACC-based rate in all parts of the benefit calculation yielded inappropriately high economic benefit calculations. They posited that future cash flows represent uncertainty and risk, while past cash flows are known, certain, and riskless. Thus, they generally agreed that discounting future cash flows should be done with a WACC-based rate or some other risk-based rate, but felt that compounding past cash flows forward should be done with a riskless rate. They cited selected academic literature from economic and financial analysis of commercial damages in torts cases, proposing two alternative methodologies:

- (A) Use BEN's initial figure for the economic benefit as of the noncompliance date (*i.e.*, bring all cash flows, irrespective of when they occur, back to the noncompliance date at a rate reflecting risk), but then bring this intermediate economic benefit figure forward to the penalty payment date at a risk-free rate.
- (B) From the perspective of the penalty payment date, bring all future cash flows back in time at a rate reflecting risk (*e.g.*, the WACC) and bring all past cash flows forward in time at a risk-free rate (*e.g.*, the after-tax return on short-term U.S. Treasury securities).

Both of these methodologies produce significantly lower economic benefit estimates than the BEN model. A range for the magnitude of the typical differences is difficult to provide because of the many different types of cases. But while alternative A will generally produce significantly lower benefit analyses than EPA's BEN approach, alternative B is so extreme that it will often produce negative economic benefit estimates for the capital investment portion of the compliance scenario.

The second group of commenters agreed that the WACC was appropriate for discounting all future costs back to the noncompliance date, and then compounding the initial economic benefit forward to the penalty payment date.[20] The third group commented that BEN's use of the WACC is incorrect and leads to economic benefit estimates that are too low. These commenters instead favored a company's higher cost of equity capital, rather than the weighted average of the relatively higher-cost equity capital and the relatively lower-cost debt capital. Their rationale was that excess returns flow to a company's equity holders, not to a mixture of its debt and equity owners.

b. Final Changes

Regarding the first group of commenters, although both the conceptual bases and results of their two risk-free rate methodologies contradict each other, they share one similar rationale: Cash flows that have yet to occur in the future are uncertain and risky, whereas cash flows that have occurred in the past are certain and riskless. These methodologies, therefore, apply to future cash flows a rate that includes a risk premium (*e.g.*, a company's WACC or some other risk-adjusted rate) and apply to past cash flows a risk-free rate (*e.g.*, the return on short-term Treasury securities). As discussed below, the Agency believes that even if this approach were justified in the context of calculating damages owed to plaintiffs in certain types of tort cases, it is entirely inappropriate in economic benefit calculations for enforcement actions. The goal in the tort damages approach is to make the plaintiff whole by compensating him for his losses. The fundamentally different goal in enforcement actions is to deter future violations by both this particular violator and other potential future violators.

By contrast, the third group of commenters advocate the use of an equity-based discount rate. This approach is more reasonable than the risk-free rate alternatives, although the Agency still believes that using the WACC throughout all aspects of the calculation is the most reasonable and hence preferable approach.

(i) Risk-Free Rate Forward: Theoretical Issues

The goal in a tort action is to make the plaintiff ''whole.'' The settlement or court determination ultimately should place the plaintiff in the same financial position as if the wrong had not occurred. The first step in such a case is to calculate the necessary compensation at the time of the actual wrong. The next step is to adjust the compensation calculated at the time of the actual wrong to the time at which such compensation is to be made. Certain authors writing about tort damages have advocated bringing such compensation forward at a risk-free rate.[21] Otherwise, the plaintiff would be ''having-its-cake-and-eating-it-too'': The initial compensation has essentially been invested at the time of the actual wrong at a rate reflecting risk taking, yet the plaintiff is now granted the compensation which grew at that rate, without ever bearing the accompanying risk. (In contrast, the regular investor would have made the investment and then had to stand by nervously as the investment's value either grew or fell). This was the reasoning behind some of the commenters in the first group advocating that BEN employ such a risk-free rate approach.

While the appropriate focus in a tort damage action is on compensating the victim (*i.e.*, plaintiff), this is not appropriate in an enforcement action. The enforcement agency is not suing for damages it has suffered. The goal is not to make the plaintiff whole (*i.e.*, to restore to it the amount by which it was damaged). The goal of the economic portion of a civil penalty is to return the defendant to the position it would have been in had it complied, and thus disgorge from it the amount it wrongfully gained. If civil penalties, comprising the economic benefit and gravity components, effectively allow the violator to gain an economic advantage from its violations, other companies will see an advantage in similar noncompliance. This is a fundamentally different perspective from a tort case, and demands a fundamentally different view of adjusting cash flows to a present value.

The appropriate discount rate for economic benefit calculations is a company's opportunity cost of capital, reflecting the financing costs for pollution control investments or the value of investment opportunities foregone because of pollution control purchases. The opportunity cost of capital is the incremental expected rate of return a company must earn to pay back its lenders (*i.e.*, bond holders) and owners (*i.e.*, stockholders), which is the weighted-average cost of capital.

[20] One commenter agreed with compounding the initial benefit forward at the WACC rate, but only to the compliance date, after which a lower compounding rate would be appropriate. His rationale was that a company then must set aside specific funds to pay a penalty; therefore, the economic benefit estimate should be compounded either at the actual interest rate on an escrow account or at the company's debt rate (which reflects its risk of going out of business, resulting in an inability to pay a penalty). Even if EPA took this approach, it would make no difference in the calculation where compliance had not yet been achieved at the time of settlement or trial.

[21] No consensus exists, however, and many other authors have advocated other approaches. Judges in tort cases have arrived at rulings that mandate many different rates, with many different values and rationales.

The risk-free rate methodologies use short-term U.S. Treasury bill rates that are unrelated to a company's opportunity cost of capital. Only the Treasury of the United States of America is able to borrow at the U.S. Treasury bill rate.[22] Companies lack the advantage of such low financing rates. To finance additional projects, they must either issue debt at higher interest rates, and/or issue equity, which requires returns of even higher rates.

Applying the risk-free rate to a company's cash flows presumes an unattainably low borrowing rate and an insufficient return on investments. (With the exception of mutual funds, a company whose main business was investing in T-bills would not be in business for very long.) The true opportunity cost of capital for a company far exceeds the T-bill rate. The risk-free rate will therefore systematically understate the economic benefit of pollution control noncompliance. Penalties based solely on economic benefit calculated with a T-bill rate would allow a defendant to retain a potentially substantial gain. Because of the precedent of this retained gain, other regulated companies might see an economic advantage in similar noncompliance, and the penalties based on a risk-free rate approach will fail to deter potential violators.

(ii) Risk-Free Rate Forward: Practical Implications

Not only are the theoretical underpinnings of the risk-free rate forward methodologies flawed, but their practical implications are also troubling. Specifically, the use of the risk-free rate fails to achieve the overriding goal of economic benefit recapture: To make the violator financially indifferent between compliance and noncompliance, which in turn constitutes a critically important element of deterrence.[23] An example helps to illustrate this point.

Suppose a company is deciding whether to purchase pollution control equipment this year (*e.g.*, 2000), or to wait until the same month in the next year (*e.g.*, 2001). The company is not necessarily contemplating a willful violation of the law—perhaps the law's interpretation is unclear, and the company would like to know the financial consequences of not purchasing the equipment, and then later being found to be in noncompliance. The company, therefore, wants to know how much better or worse off it will be by delaying the purchase one year.

The company performs three sets of economic benefit calculations. First, it calculates the economic benefit as of the present time (*e.g.*, June 2000). This lets the company know how much better off it will be by delaying the purchase (*e.g.*, until June 2001), in the absence of any penalty. Second, it calculates the economic benefit as of one year later (*i.e.*, June 2001, when it would otherwise purchase the equipment, and also pay any penalty), and then discounts the calculated economic benefit back to the present (*i.e.*, June 2000). This lets the company know the present value of any economic benefit based penalty that is calculated and paid the following year in 2001. Third, it subtracts the second result from the first result to determine the net amount by which it is better or worse off (*i.e.*, the economic benefit of its noncompliance, minus the present discounted value of the economic-benefit-based penalty it can expect to pay in 2001).

The first economic benefit calculation yields the same result regardless of which economic benefit methodology is used, because all the cash flows occur in the future.[24] In this example, the only compliance measure is a one-time—*i.e.*, no replacement cycles—capital investment of $10 million.[25] The company calculates that it is financially better off now in 2000 by $519,767 from a projected one-year compliance delay.

The company also needs to know how much better off it will be on net should the enforcement agency assess a penalty in 2001 equal to the calculated economic benefit from its delayed compliance. Assuming that the agency uses BEN, the economic benefit is brought forward one year by an estimate of the company's WACC (in this case 10 percent), so the economic-benefit-based portion of the penalty the company will pay is $571,744.[26] But because the company will pay the penalty a year in the future, it must discount that amount back to the present. If it discounts the penalty at the same rate that BEN used to compound the penalty forward to the penalty payment date, the present discounted value of the future penalty will always be equal to the economic benefit the company calculates for itself (in this case, $519,767). The company can therefore expect to have any economic benefit disgorged from itself, which makes the company financially indifferent between compliance and noncompliance. The column in the exhibit below labeled ''BEN'' summarizes these calculations.

Economic benefit	BEN	Alternative A	Alternative B
1. Penalty Payment Date of 6/1/2000	$519,767	$519,767	$519,767
2a. Penalty Payment Date of 6/1/2001	571,744	533,281	(147,798)
2b. Result 2a discounted back to 6/1/2000	519,767	484,801	0
3. Net Result (*i.e.*, 1 − 2b)	0	48,480	519,767

Perhaps, however, the enforcement agency uses one of the alternative methodologies. Under alternative A, as described in Section II B(8)(a), above, the initial economic benefit as of the noncompliance date is calculated with BEN, but is then compounded forward at the after-tax risk-free rate. In this case, compounding the initial economic benefit forward from 2000 to 2001 at an illustrative risk-free rate of 2.6 percent yields $533,281. The company

[22] This is a very favorable rate, because of the U.S. Treasury's over two-century default-free record, its ability to create money, and also the State tax-free status of its debt instruments.

[23] Because benefit recapture by itself merely makes the violator indifferent between compliance and noncompliance, only a total penalty amount that exceeds the economic benefit (by incorporating a gravity component) can achieve actual deterrence. Therefore, a civil penalty should always be at least equal to the economic benefit calculation plus some non-trivial gravity component.

[24] The results might be slightly different depending on what ''risk-adjusted rate'' the risk-free rate forward methodologies use for the future cash flows in their calculations. Different practitioners have used different ''risk-adjusted rates'' in different cases, including the same WACC-based discount rate that the BEN model uses. Therefore, for the purposes of the examples that follow, we assume that the alternative methodologies also use the WACC for future cash flows. If, instead, they were to use a different rate, the exact figures for the results would be slightly different, but the overall implications would remain the same.

[25] Other inputs include a 40-percent tax rate, 1.8-percent inflation rate, and 10-percent WACC.

[26] Because the time between the noncompliance date and the penalty payment is only one year, the compounding takes the form of simply multiplying the initial economic benefit by the sum of one plus the discount/compound rate (*i.e.*, $519,767×(1 + 0.10)=$571,744).

discounts this future penalty back to the present (*i.e.*, 2000) at its WACC, and arrives at $484,801.[27] Because this is less than the current economic benefit of $519,767, the company realizes a net gain of $48,480. This approach fails to make the company indifferent between compliance and noncompliance and, in the absence of any additional gravity-based penalty components, the company will have an incentive to delay compliance.

If the enforcement agency instead uses alternative B, as described in Section II B(8)(a), the economic benefit as expected to be calculated a year from now in 2001 is a negative $147,798.[28] The company realizes that an enforcement agency using this approach will conclude a year from now in 2001 that no economic benefit has been gained, and therefore the economic benefit-based portion of the penalty will be zero. But the company currently calculates its economic benefit in 2000 to be a positive $519,767. At the time of initial noncompliance in 2000, the company concludes that delaying the equipment purchase will result in an economic gain, but that it will never have to pay any economic-benefit-based portion of the penalty. Once again, a risk-free approach fails to make the company indifferent between compliance and noncompliance and, therefore, in the absence of any additional gravity-based penalty components, the company will have a significant incentive to delay compliance.

(iii) Equity Rate Approach

By contrast, an approach that employs a company's equity rate focuses solely on the company's equity owners, as opposed to its other stakeholders (who hold the company's debt). Because the company's cost of equity capital will always exceed or at least be equal to a company's WACC, the economic benefit estimate—with all other assumptions held constant—will be higher or at least the same.[29] While the Agency believes that a reasonable argument supports the use of equity, we nevertheless prefer the WACC, because it better represents firms' total capital structures and their own typical business decision-making practices.

(iv) Final Change: Use WACC, Except for a Possible Early Penalty Payment

For the above reasons, the Agency believes that the current basic discounting methodology is appropriate and should not be changed, except a minor modification in certain contexts. The United States may consider allowing the violator to escrow funds for the economic benefit portion of the penalty demand (whether at the compliance date or at any other time). Then, when EPA runs the BEN model, it will use the date the funds were escrowed as the penalty payment date. The violator would have to furnish proof that it established the escrow account, as well as placed on the account appropriate restrictions (*e.g.*, all accrued interest would go to the Agency).[30] This modification, when applied to certain cases, may reduce some of the deviation in results between the competing discounting methodologies. BEN will incorporate this guidance into its help system.

8. Investment Tax Credit and Low-Interest Financing

a. Background

Economic benefit calculations for cases with noncompliance dates prior to the mid-1980s must account for two important tax-code effects: The investment tax credit (ITC) and low-interest financing (LIF).

Prior to 1986, the Federal government allowed companies an ITC on capital investments.[31] The ITC effectively reduced the after-tax cost of a capital investment. Complicated and changing rules governed the depreciation basis for a capital investment with an associated ITC.

Early versions of BEN used to account for the ITC that was available on projects completed before January 1, 1986, but did not do so for the transition years of 1986 and 1987. The transitional rules allowed companies to obtain an ITC for projects completed after December 31, 1985, if the project met one of three criteria regarding the level of planning and construction that had occurred by that date.[32] Because the allowance of the ITC in these years was far from automatic (although still possible), BEN warned the user about this issue for noncompliance dates between January 1, 1986, and June 30, 1987. If further research and analysis showed that the granting of an ITC was likely in a particular case, then a financial analyst could adjust the BEN result through an ''off-line'' calculation.

Prior to 1987, LIF was available for a business's investment in pollution control. A much earlier version of the BEN model included a variable that accounted for LIF. The 1993 version of BEN removed this variable because it was relevant only for cases with noncompliance dates before 1987. Once this variable was removed, BEN would then issue a warning to the user about LIF for noncompliance dates before January 1, 1987. If further research and analysis showed that LIF was probably available in a particular case, then a financial analyst could adjust the BEN result through an off-line calculation.

b. Final Changes

A few commenters suggested that EPA could revise the BEN model to allow an option for ITCs during the 1986–87 transition years, as well as to account for LIF in years prior to 1987. These revisions would, however, add considerable complexity to the model.

[27] Even if the company were to discount the future penalty back at a rate lower than its WACC, this rate would still exceed the risk-free rate that alternative A uses to compound the economic benefit forward, and therefore the discounted future penalty would still exceed the currently calculated economic benefit.

[28] A negative economic benefit result for the capital investment portion of compliance is typical for alternative B. In many recent cases, the violators' witnesses implementing this approach have arrived at negative economic benefit results for delayed capital investments, despite the fact that no changes occurred in technological or legal requirements over time between the dates of noncompliance and compliance. (In other words, the negative economic benefit result was derived from on-time and delay scenarios involving the same piece of capital equipment, with the passage of time affecting only inflationary adjustments for the cost estimate.) Applying the combination of an extremely low risk-free rate for past cash flows and a higher risk-adjusted rate for future cash flows to delayed capital investments (with their past cash outflows for the actual investment and their future cash inflows for depreciation tax shields) can produce aberrant results that defy common sense. These perverse negative economic benefit estimates do not reflect any real economic losses because of the expenditure delay. Furthermore, even if the parameters in this example were different, the economic benefit—although perhaps positive—would still be much smaller than even under alternative A, and would similarly fail to make the company indifferent between compliance and noncompliance.

[29] The WACC will equal the equity cost of capital if the company has no long-term debt. Note also that an economic benefit calculation using the equity rate should first net out any cash flows attributable to debt financing, as the focus in such a calculation is on the returns to the company's equity holders only.

[30] Should the escrowed amount exceed the benefit component, then the interest on the amount that exceeded the economic benefit component would accrue to the violator.

[31] Note that this and other tax-related adjustments are irrelevant for municipalities, federal facilities, and other not-for-profit entities because their marginal tax rate is equal to zero.

[32] The criteria are: ''1. It is constructed, reconstructed, or acquired under a written contract binding on December 31, 1985; 2. it is constructed or reconstructed by the taxpayer, construction was begun by December 31, 1985, and the lesser of $1 million or five percent of the cost was incurred or committed by December 31, 1985; or 3. it is an equipped building or plant facility, construction was begun by December 31, 1985, under a written specific plan, and more than one-half of its cost was incurred or committed by December 31, 1985.'' (Commerce Clearing House, Inc., Explanation of Tax Reform Act of 1986, page 328.)

Furthermore, the Agency did not receive any comments documenting recent instances in which an off-line calculation was necessary to account for ITCs or LIF. This is not surprising EPA Headquarters had received only one call in response to the older BEN model's previous warning about LIF. Furthermore, the already low likelihood of the need to account for ITCs or LIF continues to decline with the passage of time, as EPA is not likely to see many enforcement actions now in the mid-2000s for violations that began in the early to mid-1980s.

The June 1999 notice's proposal on this issue ''that the revised BEN model not accept noncompliance dates before July 1, 1987 ''did not receive any objections from commenters. This cut-off date will ensure that BEN's omission of ITCs and LIF is not leading to incorrect economic benefit estimates. EPA will provide assistance in performing the necessary calculations for cases that involve noncompliance dates before July 1, 1987.

C. Improving the BEN Model's User-friendliness

EPA understands that some users find the BEN model difficult to use. While that has not been EPA's experience, the Agency expressed interest in learning of any difficulties users encountered when running the model. The Agency particularly requested suggestions for realistic alternatives that would preserve the model's degree of precision.

1. Is BEN Too Complex To Operate?

a. Background

EPA invited comments on whether any aspect of BEN's operation or user's documentation is too complex. Although the Agency designed BEN to be straightforward and easy to use, we welcomed any suggestions to make the model easier to use without compromising BEN's degree of precision.

b. Final Changes

Many commenters thought that although the old BEN model was generally easy to use, certain aspects of the prior version's operation were cumbersome. The Agency agrees, given the model's origins as a mainframe computer application and then its prolonged existence in the DOS operating environment. Because essentially all computer users are now long accustomed to the Windows™ operating environment, the Agency has decided that the revised BEN model will continue to run in Windows (version 95 or higher). This makes basic data entry and benefit calculations much easier to perform, as well as allowing the addition of various advanced features without burdening the user with additional complexity.

EPA has also established a toll-free helpline for Federal, State, and local government enforcement staff who need additional assistance in using the BEN model. The helpline provides Federal, State, and local environmental enforcement agencies with advice regarding financial issues that impact enforcement cases. The main types of inquiries EPA is addressing with this helpline are:

- The calculation of a violator's economic benefit from noncompliance;
- The evaluation of a violator's claim that it cannot afford to comply, clean up, or pay a civil penalty, and the application of the three computer models—ABEL, INDIPAY, and MUNIPAY [33]—that address these issues; and
- The calculation of the actual costs of a supplemental environmental project, and the application of the computer model—PROJECT [34]—that addresses this issue.

Callers can obtain assistance in downloading the BEN model and the previously mentioned other models, as well as relevant policies and guidance documents. In addition, callers can obtain advice on how to access training courses on the models and related subjects. Inquiries regarding the interpretation of Federal statutes and EPA policies will be referred to the EPA, as will inquiries from nongovernment employees except for relatively straightforward technical inquiries (*e.g.*, installation problems).

The toll-free helpline phone number is 888–ECONSPT (326–6778), and is staffed by a contractor, Industrial Economics, Incorporated, located in Cambridge, Massachusetts. The helpline is in operation from 8:30 AM to 6:00 PM Eastern time and will accept voice mail messages when it is not in operation. In addition, the contractor has provided a companion e-mail address: *benabel@indecon.com*. When requesting help, enforcement staff should identify their governmental affiliation. As mentioned at the beginning of this notice, anyone can download the model through the EPA's Web site at: *www.epa.gov/compliance/civil/programs/econmodels/index.html.*

2. Is the Information BEN Needs Difficult or Expensive to Obtain?

a. Background

One of the main breakthroughs BEN achieved over its predecessor model was its streamlining of the data needed to operate the model. While the model requires a minimum of only seven data inputs (mainly just three dates and up to three cost estimates), some users apparently feel the data is difficult to obtain. This has not been EPA's experience, as most (if not all) of the required data inputs are based on facts that are already or should be known to the litigation team as the data are important to other parts of the settlement. Nevertheless, the Agency welcomed any suggestions on how to make this data easier to obtain as long as the model's degree of precision is preserved.

b. Final Changes

The Agency received a wide range of responses on this issue. Most users thought the necessary data was easy to obtain; others thought it was prohibitively difficult to obtain. EPA did not receive any specific suggestions on how to streamline the model's data requirements even further. The Agency did receive suggestions that the BEN model incorporate some basic, generic compliance data.

The Agency has cost information on its Web site for the UST (Underground Storage Tanks) and Clean Air Act (Stationary Sources) [35] programs. In addition, it produced a written manual on standardized RCRA (Hazardous Waste) costs. These information sources should assist users in determining compliance costs, and then using them in the BEN model to calculate an economic benefit figure. Although these information sources are not a substitute for case-specific data, they will at least provide a starting point and a reasonably accurate estimate when a violator refuses to provide any detailed cost information.

Also, as noted at end of Section II C (1)(b), above, EPA has established a toll-free helpline to provide assistance to government enforcement personnel regarding financial economics issues in environmental enforcement cases. Helpline staff can provide suggestions on how to obtain the necessary data to run the BEN model.

[33] ABEL, INDIPAY and MUNIPAY evaluate inability to pay claims from for-profit entities, individuals and municipalities, respectively.

[34] As most supplemental environmental projects (SEP's) are completed long after the cases are settled, any stated SEP cost is usually far above the ''real'' cost to the violator. Therefore, PROJECT calculates the SEP's actual costs to the violator.

[35] The web address for the Clean Air Act Stationary Source information is: *http://www.epa.gov/ttn/catc/products.html.*

D. Procedural Issues Regarding the Public Comment Process

Although the Agency did not request any comment on the public comment process itself, the Agency did receive several comments regarding procedural issues. EPA's responses to the major requests are as follows:

• *Extend the initial public comment period:* In response to such concerns, the Agency extended the deadline for the initial round of public comments from the originally stated January 1, 1997, to a significantly later March 3, 1997 (*see* **Federal Register** notice on December 12, 1996, at 61 FR 65391).

• *Follow up on the public comment period by first drafting the findings, then requesting and evaluating further public comment, and finally publishing a formal draft on the final decision:* In response to such concerns, the Agency has done exactly that. The June 1999 notice responded to the comments, came out with a proposal, and then requested further comment on that proposal. This notice contains the final findings.

• *Provide a separate public comment process for the illegal competitive advantage guidance document:* Since the Agency has already solicited public comment on illegal competitive advantage issues, a separate public comment process would be duplicative. But as was mentioned earlier in this notice, the EPA's Science Advisory Board has initiated a peer review of the draft illegal competitive advantage guidance document.

• *Submit the BEN model to a formal peer review process:* As noted earlier, EPA submitted its draft BEN model changes to an academic peer review in the spring of 2003. The process concluded at the beginning of 2004.

III. Response to Comments

A. Broad Economic Benefit Recapture Issues

1. Alternatives to BEN

Comment: One commenter challenged the economic rationale of the entire benefit recapture ideology, concluding that EPA's current approach encourages compliance disproportionate with resultant social benefits. The alternative recommendation was to base penalties on violations' social costs rather than the private gains, thus providing the possibility of an ''efficient breach,'' a concept from contract law. The illustrative example was an individual lost in the woods who steals food from a cabin to avoid starvation. Under the social cost approach the individual would be required to repay the cost of the stolen food. The commenter argues that EPA's approach in this context would be analogous to attempting to recover the private gain, presumably the value of the individual's life.

Response: As discussed in the main text of this notice, the Agency finds this approach unacceptable, inconsistent, and infeasible with regard to its objectives to enforce regulatory requirements. More specifically, in the example of the starving person, society has implicitly agreed that the individual may violate the normal respect for private property and steal the food, being required later to repay only the cost of the food. By contrast, society has not agreed that companies may violate environmental statutes at will whenever they expect their private gain to exceed the social costs. To use another example at the individual level, motorists are required to stop at red lights even at deserted intersections. If a driver is caught running a red light, financial compensation to other parties may not be necessary if no accident has occurred, but a regulatory penalty in the form of a moving violation ticket is still appropriate. A police officer is generally not convinced by a violator's argument that the lack of social damage is outweighed by the violator's gain (in terms of time saved in this example), and EPA is similarly not convinced by such an analogous argument.

2. Illegal Competitive Advantage

Comment: Several commenters felt that EPA has not demonstrated a clear need to broaden the benefit recapture framework to consider illegal competitive advantage, and questioned whether the scenarios described in the June 1999 notice were realistic and supported by actual data. These commenters felt that consideration of illegal competitive advantage is appropriate only under rare and limited circumstances.

Response: The Agency agrees that consideration of illegal competitive advantage will occur far less frequently than the typical BEN-type of benefit, but it does not agree that such occurrences will be rare. As the main text of this notice explains, specifically those situations are where revenues in both the actual noncompliant and hypothetically compliant states are not identical (as BEN implicitly assumes). As previously noted, the Agency is not planning to issue any guidance on the subject of illegal competitive advantage at this time. Therefore it is premature to address the comments that were directed at the scenarios that appeared in the June 1999 notice.

Comment: Two commenters recommended that the Agency adopt alternative terminology for ''competitive advantage,'' because the scenarios described in the June 1999 notice do not necessarily involve ''competition,'' as in antitrust cases.

Response: The Agency agrees that the term may not be ideal, and has been open to alternative suggestions. Unfortunately, no commenter proposed any. The underlying concept is economic benefit that goes beyond the BEN model's simplifying paradigm of delayed and/or avoided pollution control costs, but unfortunately this is difficult to convey in merely two or three words.

Comment: Many commenters expressed concern over the additional resources necessary for the data and analysis associated with illegal competitive advantage. One commenter questioned whether such analyses were feasible altogether, and another questioned whether EPA staff was sufficiently qualified to undertake them. Finally, one commenter suggested that attempts to calculate illegal competitive advantage should not be made until EPA has issued formal guidance.

Response: Illegal competitive advantage cases may involve more detailed financial data and analysis than typical BEN cases, although in some cases they will involve less. When such cases do arise, the Agency will rely heavily on expert support, just as it currently does for much of its more complex economic benefit recapture work. Moreover, the absence of formal guidance in the interim should not preclude staff from identifying and analyzing illegal competitive advantage. Recapture of economic benefit based on illegal competitive advantage has been EPA's position since the inception of the policy in 1984 to recapture all the economic benefit from noncompliance. There are now a series of case decisions that have already based 100 percent of the violator's economic benefit on illegal competitive advantage. It is worth noting that in one of the cases, the benefit calculation was so simple that the Agency did not even need to present expert testimony on illegal competitive advantage.

Comment: One commenter disagreed with the June 1999 notice's characterization of the role of marginal production costs regarding illegal competitive advantage from increased market share. Figure 1 below reproduces the graph that the commenter attached. As in the classic textbook example of a ''price-taking'' firm facing a competitive market, the firm produces up to the point where its marginal cost of

production (as depicted by the line MC_c for a compliant firm) is equal to the market equilibrium price (as depicted by the horizontal line, P). The firm produces quantity Q_c, with a profit equal to the triangle described by the points P–A–B (*i.e.*, the area lying below the market price but above the marginal cost curve). Although noncompliance may alter marginal costs such that the firm is at the lower MC_{nc}, if it anticipates with 100-percent certainty the imposition of and magnitude of a BEN-based penalty, then it will continue to produce at Q_c (not the higher Q_{nc},) since the marginal costs will eventually be retroactively incurred in the form of the penalty. Therefore, the BEN model captures the entire economic benefit.

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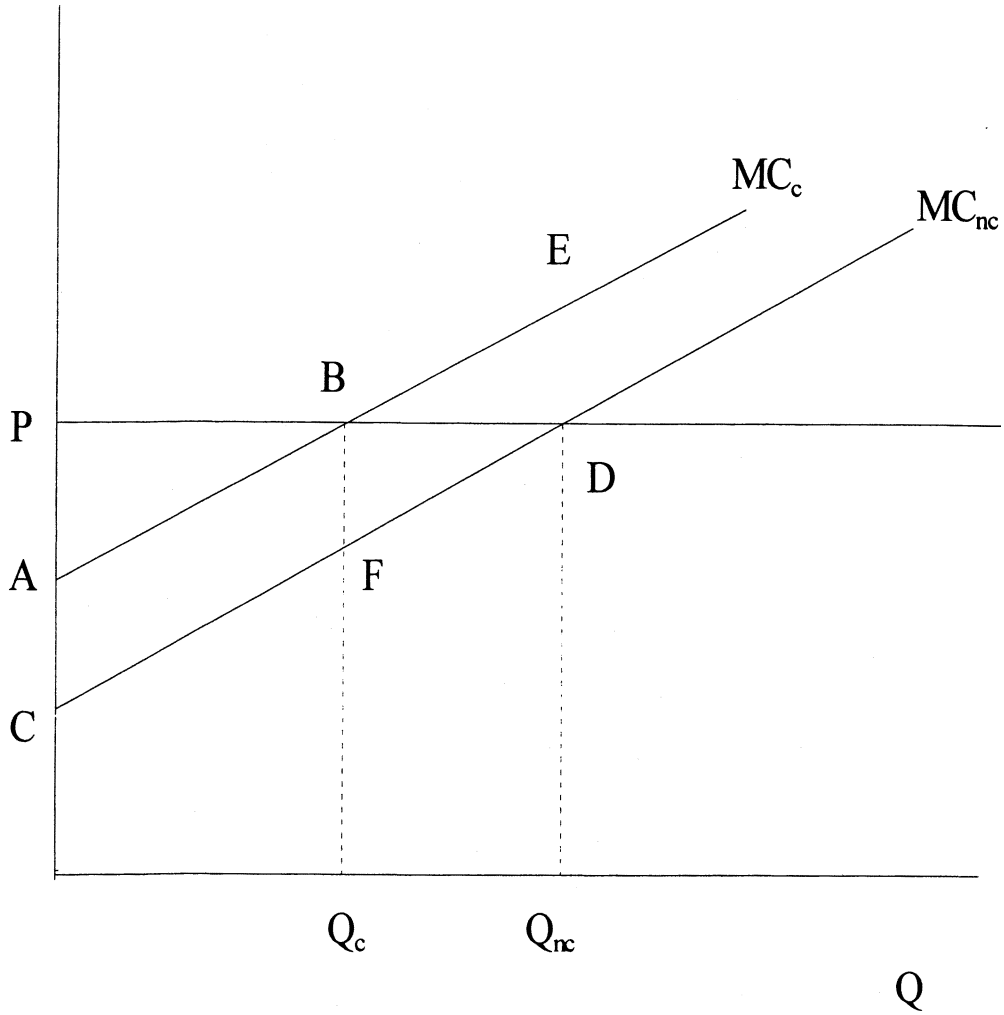

Figure 1: Marginal Costs and Economic Benefit

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Response: If the many economic assumptions necessary for this hypothetical scenario are accepted (particularly the certain anticipation of the size of the BEN component of a penalty), then the conclusion is correct. But the complicated analysis necessary to arrive at this conclusion is moot: if the firm has not altered its behavior and not gained any market share, then market share from illegal competitive advantage is not an issue.

Comment: The same commenter continued with this example, but assumed alternatively that the noncompliant firm does not anticipate a BEN-based penalty, for whatever reason. With the lower marginal cost of production MC_c it produces at the higher Q_{nc}. A BEN-type calculation would be based on the difference between MC_c and MC_{nc} (*i.e.*, the per-unit compliance cost), multiplied by the number of units (*i.e.*, Q_{nc}), and therefore equal the area described by the points A–C–D–E. But this overestimates the economic benefit the company has actually received, which is A–C–D–B (*i.e.*, the actual profit P–C–D, minus the compliant profit P–A–B). Therefore, even if the firm does gain market share from its noncompliance, BEN would overestimate the economic benefit, not underestimate it.

Response: The Agency has never encountered such a situation, especially

since such textbook graphs—while helpful for understanding broad economic concepts and aggregate market behavior—may not be very relevant for many individual firms. For example, marginal cost curves for individual firms are often not smooth curvilinear functions, but rather approximate more crude step functions. Combined with the relatively small magnitude of typical compliance costs compared to total variable production costs, the Agency is unaware of any violator claiming that it would have produced less had it incurred the compliance costs on-time. Nevertheless, this graph does illustrate the theoretical possibility that a BEN-type calculation could overestimate the economic benefit if all these conditions were present. The opposite, however, is also possible: if the compliance costs calculation is based upon a compliant level of production (*i.e.*, Q_c), then the resulting area A–C–F–B will underestimate the actual economic benefit (*i.e.*, A–C–D–B). This further emphasizes the need for a detailed examination of the company's actual noncompliant and hypothetically compliant behavior (and cash flows), if the noncompliance is reasonably believed to have increased a violator's market share.

Comment: One commenter suggested that a warning message be incorporated in the BEN module that advises the user that an affirmative answer to any of the questions regarding illegal competitive advantage indicates only the possibility that such a situation exists and that any presumed illegal competitive advantage may reduce the conventional BEN result.

Response: The Agency agrees with the goals of this comment. The Agency has requested the Science Advisory Board to look at this issue as part of its review of the ICA type of economic savings. Thus for the immediate future, the BEN model will not contain any questions, references or guidance regarding ICA.

Comment: Many commenters expressed concern over the potential for double counting in situations where illegal competitive advantage is considered. In particular, several commenters indicated that conventional BEN calculations and those related to illegal competitive advantage should be mutually exclusive options for penalty arbitration. One commenter suggested that a penalty that incorporated both would constitute double counting because the violator would have forgone some profits that are captured in the BEN calculation. Another commenter suggested that an illegal competitive advantage component should not be considered unless evidence suggests that it is likely to outweigh the conventional BEN result.

Response: The Agency agrees that simply adding an estimate of illegal competitive advantage to the BEN model's result would create the potential for double counting. But this is only a potential. In some cases it will be appropriate to seek benefit recapture based upon both types of benefit. In *In re: Lawrence John Crescio III,* No. 5–CWA–98–004, 2001 WL 537494 (May 17, 2001), an administrative law judge assessed a civil penalty that recaptured both types of benefit. Nevertheless, the emphasis for illegal competitive advantage is on a unified approach, laying out all the relevant cash flows associated with the on-time and delayed compliance scenarios. The economic benefit is then equal to the difference between the two scenarios' after-tax net present values. This is the same approach that the BEN model follows, although the scenario construction under illegal competitive advantage will—almost by definition—be more complex than under the BEN model.

Comment: Several commenters referred to the language of the penalty provisions of many of the statutes that EPA is responsible for along with the legislative history of those provisions. They claimed that those provisions authorize neither the recovery of illegal competitive advantage nor the mandated recovery of economic benefit as a necessary penalty minimum. Similarly, another commenter questioned EPA's position that the recovery of economic benefit is ''no fault'' in nature and suggested that it would be incorrect to assert that it must be recovered in every enforcement case.

Response: The passages these commenters cite clearly show that various members of Congress were often equating economic benefit with delayed/avoided compliance cost savings. But they made this association only because economic benefit typically results from delayed and/or avoided expenditures. There is nothing in the legislative history cited by these commenters to suggest that Congress intended to exclude the possibility of other kinds of economic benefit accruing from noncompliant actions (*i.e.*, illegal competitive advantage). Furthermore, the minimum recovery of economic benefit in a penalty—regardless of the violator's motives or the violation's impacts—is a common-sense notion that need not rely entirely on the legislative record for its support. Even if the argument is confined to statutory interpretation, the trier of fact, in imposing a civil penalty, is not limited to consider only those factors present in the applicable statute's penalty provisions. For example, judges have recaptured economic benefit in RCRA cases even though RCRA is silent as to the consideration of economic savings.

3. Other Broad Economic Benefit Recapture Issues

Comment: Several commenters asserted that in cases of technological infeasibility, shutdown as a means of compliance is an inappropriate suggestion, both because EPA does not have the statutory authority to mandate shutdowns and because of the consequential economic and social displacement.

Response: The issue of whether the enforcement agency should request a judge to order a violating firm to shut down is not germane to the discussion of how to calculate the economic benefit of noncompliance. What is relevant is that the economic benefit analysis should as a general rule (though with reasonable exceptions) be modeled on the actual or anticipated means of compliance. If the facility has complied (or will comply) by shutting down, then the baseline assumption for the economic benefit analysis is that the violator should have complied on-time by shutting down at an earlier date.

Comment: Several commenters stated that penalties should not be assessed in cases of industry-wide noncompliance. In particular, some commenters argued that penalties should not be assessed in situations where EPA has re-interpreted relevant regulations or failed to provide ''fair notice''.

Response: If an entire industry has failed to comply, then all of the firms in that industry have gained an economic benefit that should be disgorged. Otherwise, firms in a given industry would have an incentive to collude in noncompliance. In addition, one industry may be competing against another (hydroelectric power versus fossil fuel based electric power) such that the industry that fails to comply obtains a significant advantage in that competition. Finally, if for some reason all the firms in a particular industry are out of compliance, each violating firm still obtains an economic benefit. By delaying and/or avoiding compliance expenditures, each of the firms is saving money even if the playing field is level. The Agency needs to recapture that benefit from any violating member of that industry if it wants to produce deterrence.

EPA's perspective is that the economic benefit gained is ''no fault'' in nature. By this the Agency means that a company need not have intentionally

violated the law, or been aware of the violation, to have accrued economic benefit. Nevertheless, the concept of ''fair notice'' can be relevant to penalty assessment and may be an exception to this ''no fault'' approach. Some courts have found that fair notice is a defense to a penalty action if established by the defendant. This is not saying that the violator failed to obtain an economic benefit from its noncompliance. Fair notice is thus a legal defense, not an economic one. As a policy matter, the Agency generally does not seek any penalties where that defense has been clearly established.

Comment: Two commenters stated that the BEN model does not accurately measure regulated utilities' economic benefit. Specifically, one commenter noted that because regulated utilities are able to recover their compliance expenditures and earn a rate of return on those investments, the timing of periodic rate adjustments should be considered. For example, if compliance expenditures associated with a new facility are delayed until after a rate assessment, the utility forfeits returns on that investment until the subsequent rate assessment, a tacit loss that is not reflected in BEN model calculations

Response: The Agency generally agrees that the BEN model does not reflect that potential loss in some situations, but it does not agree with the implications. Specifically, the violator has created an economic benefit, which, depending upon the particular circumstances, has accrued either to the utility or to its customers in the form of lower rates. In some cases, both the utility and the customers obtain the benefit. Either way, this economic benefit should be recaptured. Otherwise, given the joined-at-the-hips relationship between a traditional rate-of-return regulated utility and its ratepayers, the financial incentive would arise to avoid compliance and thus create goodwill among ratepayers (knowing that the economic benefit would not be recaptured) that could help the utility in the next rate hearing. To ignore this benefit generated by such a regulated utility creates a very strong incentive to evade compliance responsibilities.

The analogy of a landlord-tenant relationship helps to illustrate this concept. Suppose that the lease conditions allow pollution control costs to be passed through to the tenant, and suppose that the regulatory agency agrees that the economic benefit that the landlord created through its violations should not be recaptured via a civil penalty since the economic benefit was passed through to the tenant (in the form of lower rent payments). The landlord now has an incentive to avoid compliance, since and thus create goodwill with its tenant (knowing that the economic benefit will not be recaptured) that could help the landlord in the next round of lease renegotiations.

Comment: Two commenters questioned whether economic benefit was appropriate for Federal agencies and facilities.

Response: Federal agencies and facilities are no different from local, regional, and State governmental jurisdictions in the context of economic benefit. Although governmental entities do not have the same profit motive as for-profit businesses, they may still benefit economically from their noncompliance, and that benefit must be recaptured.

Comment: One commenter suggested that by increasing focus on the recovery of economic benefit, EPA will in fact create an ''unlevel playing field'' because it will limit the extent of the gravity component it can assess given the statutory penalty maximum of $25,000 per day.

Response: The Agency has not seen many cases in which the economic benefit exceeds (or is very close to) the statutory maximum, but concedes that in those cases even the statutory penalty maximum may not be sufficient for optimal deterrence. Ignoring or reducing the economic benefit in all our penalty actions in order to address this situation would make little sense. The solution required is probably a legislative issue.

Comment: One commenter felt that EPA's abilities to recover economic benefit should not be permitted to supercede the statute of limitations.

Response: The application of the statute of limitations to a benefit calculation is a legal issue and is well beyond the scope of this notice. The purpose of this notice is to determine the best economic methodology for the Agency employ when calculating the economic benefit of noncompliance. From a financial economics perspective, the statute of limitations issue is irrelevant. The benefit accrues to the violator regardless of whether the first day of noncompliance was two years ago or ten years ago.

B. The BEN Model's Calculation Methodology

1. Discounting/Compounding

Comment: Many commenters indicated that the risk-free rate is the appropriate compounding rate for BEN calculations. This is because investments in pollution control carry very little, if any, systematic risk and do not add value to a firm. Similarly, the probability of the violation attracting an enforcement action and the subsequent penalty not being paid is not a relevant risk for the present value adjustments. Because penalty payment cash flows are certain, a risk-free rate is the appropriate compounding rate.

Response: The Agency is puzzled by the critical assertion in this line of reasoning that pollution control investments do not add value to a firm: would these commenters pay the same price to purchase two firms that were identical but for their investments in required control equipment? As discussed in this notice's main text, a risk-free rate does not accurately reflect the benefit a company could gain through alternative use of compliance funds. For these reasons, the Agency maintains that an estimate of a violator's cost of capital is appropriate for both discounting and compounding purposes in the BEN model.

Comment: Two commenters criticized EPA's distinction between tort damages and economic benefit and advocated the adoption of a risk-free compounding rate.

Response: The Agency maintains that tort damages and economic benefit differ fundamentally in that the goal of the former is to restore to the plaintiff the amount by which it was damaged, while that of the latter is to return the defendant to the position it would have been in had it complied, and thus remove from it the amount it wrongfully gained. Therefore, the relevant rate to apply to the violator's cash flows is its cost of capital, which reflects the minimum rate of return it can expect to earn on average from funds not invested in pollution control.

Comment: One commenter suggested that a risk-free interest-forward rate be used in BEN model calculations because a violator would have to place funds in a risk-free vehicle to pay the required penalty.

Response: Outside of cases in which a violator formally agrees during settlement negotiations to escrow penalty funds, the Agency is unaware of any violator that has ever done so, and therefore feels that this suggested theoretical construct is highly unlikely.

Comment: One commenter pointed out that a risk-based discount rate, specific to the project in question, should be utilized in BEN model calculations.

Response: Because the project is an investment in required pollution control equipment, it is essentially an investment in the continuing operations of the firm as a whole (or the relevant

operations division). Thus, the WACC accurately reflects the risk of the project.

2. Inflation Adjustments

Comment: One commenter felt that the cost indices relied upon in the BEN model should include an installation component.

Response: The BEN model's default cost index, the Plant Cost Index (PCI), includes such an installation component.

Comment: One commenter believed that future inflation rates should not be linked to the Consumer Price Index (CPI).

Response: Publicly available forecasts are available only for the CPI and the GDP price deflator. Both forecasts are fairly close to one another, plus the chosen value has a very small impact upon the economic benefit result. The Agency plans to evaluate all available information during each year's update of the projected cost indices.

Comment: One commenter felt that future inflation rates should be adjustable or, at a minimum, EPA should recognize analyses that incorporate a more complex future inflation scenario.

Response: The revised BEN model allows the user to specify estimates of compliance costs as of the noncompliance and compliance dates to reflect an alternative cost index, case-specific inflation assumptions, or entirely different actions for on-time and delayed compliance.

3. Other Technical Aspects

Comment: Two commenters commended EPA's proposal to allow for differences in delayed and on-time compliance scenarios. A third commenter suggested that only in cases where the technology necessary for compliance was unavailable at the time of noncompliance should such adjustments be allowed. Otherwise, in the on-time scenario, violators will be encouraged to seek lower penalties by searching for and advocating less costly compliance measures.

Response: The Agency recognizes that certain technological, legal, or other circumstances may occasionally cause on-time and delay compliance scenarios to differ significantly. The revised BEN model still maintains the default assumption that the on-time and delay scenarios are identical (but for inflationary effects), reserving more complicated scenarios only as an advanced option. The burden is implicitly always upon the violator to provide convincing evidence that: (1) A less-costly compliance method was available as of when timely compliance was required; and, (2) the only reason the violator invested in the more expensive equipment was to improve the environment. If, as we usually find, that the motivation to purchase the more expensive equipment was business-related (*e.g.*, the more expensive equipment was more reliable, fit better with on-board equipment, allowed for expansion, etc.) the Agency assumes that the company would have chosen that more expensive system as its compliance option had it decided to comply on time. Thus the cost entry for BEN would be based on the actual option selected by the violator for its delayed compliance.

Comment: One commenter urged EPA to maintain the BEN model's previous assumption of infinite replacement cycles, suggesting that it is essential when the delay period is longer (or shorter) than the useful life of the control equipment or when compliance involves controls with different life expectancies.

Response: As noted earlier in section III.B.5, the revised BEN model will solve this problem by implementing the concept of economic depreciation, which essentially calculates the lease value of pollution control equipment. In other words, instead of modeling the on-time replacement capital investment and the subsequent depreciation tax shields, and comparing that to delayed replacement, the calculation models leasing the equipment over the period when the on-time equipment would have required replacement yet the delay equipment is still functional. The avoided lease cost therefore serves as a reasonable approximation of the economic benefit from the delayed replacement equipment installation, and also allows the two scenarios to the modeled out the same end point.

Comment: One commenter felt that the BEN model default should not consider capital replacement because (with rare exceptions) process and control equipment are typically matched in terms of life expectancy.

Response: The Agency disagrees. The control equipment will still have to be replaced in the future, and then the violator will benefit again as its control equipment will still be functional whereas the equipment would have already required replacement had the company complied on time.

Comment: Two commenters felt that the BEN model should provide for a broader range of costs, such as those additional costs that would not have been incurred given timely compliance and precompliance expenditures.

Response: The revised BEN model's ability to accommodate different on-time and delayed compliance cost scenarios, when justified, allows for incorporation of supplementary costs, as this comment suggests.

Comment: One commenter proposed that when a defendant can justify doing so, EPA should allow for alternative depreciation strategies.

Response: The BEN model's current depreciation schedule reflects the most rapid recovery available for typical pollution control investments, resulting in a conservative estimate of economic benefit. The revised BEN model will default to shorter schedules when the useful life is less than 10 years. BEN will also include a provision for the Job Creation and Worker Assistance Act of 2002 depreciation bonus, which will be keyed off the previously required noncompliance and compliance dates, and therefore will not require any additional input from the user.

Comment: Many commenters endorsed EPA's proposed changes with respect to investment tax credits and low interest financing, specific tax rates, and increased flexibility with respect to depreciation assumptions and inflation indices.

Response: The Agency appreciates these comments, and hopes both regulators and the regulated community will find the revised BEN model a more useful and accurate tool.

Comment: One commenter felt that many of the changes described in the June 1999 notice reflected *ex post* factors and recommended that EPA maintain its *ex ante* perspective in calculating economic benefit.

Response: The Agency feels that the distinction between an *ex post* (*i.e.*, known only today, looking back in time) and *ex ante* (*i.e.*, restricted to what was known at the time) perspective is not an important one, and that almost all models necessarily use a mixture of *ex ante* and *ex post* data. The BEN model has always used a mixture of *ex ante* and *ex post* data, the latter of which can be viewed as reasonable approximations for the *ex ante* data that was actually available at the time. The changes described in the June 1999 notice merely make the *ex post* data more precise (*e.g.*, month-by-month inflation data, rather than a simple 10-year average).

C. Improving the BEN Model's User-Friendliness

1. Is BEN Too Complex To Operate?

Comment: One commenter noted that BEN is easy to use, requires minimal data and expertise and is well supported.

Response: The Agency similarly feels that BEN's ease of use and technical

support are attractive features of the model.

2. Is the Information BEN Needs Difficult or Expensive to Obtain?

Comment: One commenter doubted that reliable information will be readily available regarding on-time compliance costs that differ from delayed costs.

Response: The use of different on-time and delayed compliance scenarios is valid only in exceptional cases. In these situations, the violator's best interest will be to provide complete information. Otherwise, the default assumption is that the scenarios are identical, except for inflationary effects over time.

3. Other Issues Affecting Use of BEN

Comment: One commenter encouraged EPA to abandon its position that the intended use of the BEN model is primarily for settlement purposes.

Response: An expert witness in litigation may use any analytical tool the expert deems appropriate, which may include the BEN model. But the reality is that the Agency designed BEN with the goal of assisting its staff for settlement purposes. This is not a policy position, but rather a statement of fact, although BEN users are free to use BEN for whatever purposes they deem appropriate. Should a witness in a case wish to use the BEN model in court, that witness is free to do so, but the Agency's position is that the model is primarily intended for calculating the economic benefit for settlement purposes.

Comment: One commenter asserted that information regarding the BEN methodology, assumptions and applications should be shared with the regulated community. In addition, all parties should have access to EPA's helpline. Finally, EPA should provide all of BEN's equations and assumptions.

Response: The Agency has made precisely this information regarding how the model functions available to the public for almost twenty years. EPA does not necessarily share all of its case-specific calculations with a violator as that information is enforcement sensitive, but all of the BEN model's formulas and databases are completely transparent to the user. In regard to the helpline, the regulated community's access to this service is restricted to straightforward issues regarding software installation and execution. For resource and policy issues, EPA feels that it would be inappropriate to provide free consulting advice to regulatees who are usually the subject of enforcement actions.

Comment: One commenter felt that to ensure consistency in penalty calculations, EPA should provide detailed guidance on economic benefit calculations to its enforcement staff.

Response: In addition to the BEN model's user documentation and assistance through the helpline, the Agency has provided extensive on-site in-person training to Federal, State and local enforcement personnel. Since, 1988 EPA has presented over 80 BEN courses. The Agency has conducted over 42 ''live'' BEN training courses at EPA facilities and invited State enforcement staff to attend nearly all of them. In addition, EPA has conducted 45 BEN training courses primarily for State and local government personnel in: Hartford, Connecticut (three times); Indianapolis, Indiana (three times); Little Rock, Arkansas; Baton Rouge, Louisiana (twice); Trenton, New Jersey; Boise, Idaho (three times); Ft. Lauderdale, Florida; El Monte, California; Baltimore, Maryland; Richmond, Virginia (twice); Phoenix, Arizona (twice); Lacey, Yakima and Seattle, Washington (for State of Washington personnel); Anchorage, Alaska (twice); Atlanta, Georgia (for State of Georgia personnel); Miles City, Montana (for the State enforcement staffs of Montana, North Dakota, and South Dakota); Frankfort, Kentucky; Montpelier Vermont; Raleigh, North Carolina; Charleston, West Virginia; Columbus, Ohio; St. Paul Minnesota; Nashville, Tennessee; Denver, Colorado (for the State enforcement staffs of Utah, Colorado and Wyoming); Santa Fe, New Mexico; Yakima and Seattle, Washington (for State of Washington personnel) Boston, Massachusetts (for State of Massachusetts personnel) (twice); Lansing, Michigan; Concord, New Hampshire; Providence, Rhode Island; Austin, Texas; and Honolulu, Hawaii (twice). EPA also presented a BEN course via satellite in 1994, and made videotapes of that broadcast available to government enforcement staff on request. In addition, EPA will soon be delivering this training to enforcement personnel at their desks through WebEx presentations.

Comment: One commenter recommended that EPA assemble an ''internal appeal board'' of experts to resolve disputes over economic benefit issues in settlement negotiations.

Response: Creation of such a board is not feasible. The Agency's view is that the decision on the appropriate civil penalty is best worked out between the Agency and the violator. Where appropriate, the negotiations may involve experts. If an agreement on the appropriate penalty cannot be worked out, then the matter must be resolved by a trier of fact.

Comment: One commenter felt that EPA should disclose its methods for calculation of economic benefit in litigation settings (as opposed to settlement negotiations) and that the regulated community should be allowed to comment on these methods.

Response: The methods employed in litigation follow the same general principles of the BEN model, but the Agency is unable to predict what each independent expert may do in each case. Experts must testify as to their own expertise regarding the economic benefit of noncompliance, not as to an Agency methodology designed to produce settlements. In addition, parties in litigation have very limited amounts of time in which to produce expert reports, depose experts, etc. It would therefore be impossible to put these independent experts' testimony through some sort of public review in the middle of litigation. In addition, it would also be superfluous, since such testimony is already subject to legal discovery, and also the focus of considerable scrutiny in each case by the violator's counsel and experts.

D. Procedural Issues Regarding the Public Comment Process

Comment: Many commenters expressed concern over the form and substance of the proposed guidance document on illegal competitive advantage and felt that the document should be made available for public comment.

Response: As stated previously, the Agency feels that a separate public comment process would be redundant. Instead, it has initiated a peer review process by the Agency's Science Advisory Board.

Comment: Two commenters advised EPA to subject the BEN model to expert review. In addition, one commenter suggested that EPA should open its broader civil penalty policy to public comment.

Response: As noted earlier, the Agency submitted the draft BEN model changes to an academic peer review in spring of 2003. With respect to broader policy issues, the Agency has attempted to solicit relevant comments through this current informal notice and comment effort. This has given the public and interested experts extensive opportunities to comment on these issues. We would note that this eight-year effort was not required by law.

Comment: One commenter alleged that the BEN model has no history of peer review.

Response: The BEN model is exempt from peer review because the Agency's peer review policy, issued in 1994,

applies only prospectively, not retroactively. Nevertheless, the Agency put the BEN model through two peer reviews in 1988 and 1991. As mentioned in the June 1999 **Federal Register** notice, copies of those peer reviews are available to the public. In addition, since that comment was made, the Agency has put the model through a third peer review. That review focused on the changes to the model that we were proposing as part of this **Federal Register** process.

Comment: One commenter felt that EPA should publish any final decisions on economic benefit issues arising from the current public comment process.

Response: All the final decisions are detailed in the main text of this notice. Of course, as stated previously, the illegal competitive advantage guidance document is not final and has instead been submitted to a peer review by the Agency's Science Advisory Board.

Dated: August 18, 2005.

Granta Y. Nakayama,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 05–17033 Filed 8–25–05; 8:45 am]

BILLING CODE 6050–50–C

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6666–8]

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 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050165, ERP No. D–NPS–L61228–AK, Denali National Park and Preserve Revised Draft Backcountry Management Plan, General Management Plan Amendment, Implementation, AK

Summary: EPA expressed environmental concerns due to potential adverse impacts to water quality, wetlands, permafrost soils and wildlife from increased snowmobile use. EPA requested that the final EIS include additional monitoring plans and contingent mitigation measures that can be used with adaptive management plans to minimize adverse impacts or unexpected outcomes. Rating EC2.

EIS No. 20050186, ERP No. D–AFS–C65005–NY, Finger Lakes National Forest Project, Proposed Land and Resource Management Plan, Forest Plan Revision, Implementation, Seneca and Schuyler Counties, NY.

Summary: EPA expressed environmental concerns due to potential adverse impacts to water quality, riparian areas, wetlands, vernal pools and perched oak swamps. EPA suggests the final EIS include specific forest wide standards and guidelines or special resource area designations to protect these resources. In addition, the final EIS should consider impacts to these areas from hydrological changes caused by management actions on adjacent or near by parcels. Rating EC2.

EIS No. 20050234, ERP No. D–FHW–G40185–LA, Interstate 69, Section of Independent Utility (SIU) 15 Project, Construct between U.S. Highway 171 near the Town of Stonewall in DeSoto Parish, and Interstate Highway 20 (I–20) near the Town of Haughton in Bossier Parish, LA.

Summary: EPA has environmental concerns due to the proposed project regarding air quality impacts and transportation conformity. Rating EC2.

EIS No. 20050236, ERP No. D–AFS–J65445–MT, Rocky Mountain Ranger District Travel Management Plan, Proposes to Change the Management of Motorized and Non-Motorized Travel, Lewis and Clark National Forest, Glacier, Pondera, Teton and Lewis and Clark Counties, MT.

Summary: EPA expressed environmental concerns due to adverse impacts from motorized uses on watersheds and water quality, wildlife habitat and cultural resources. EPA believes alternative 3 best balances conserving and protecting water quality, fisheries and reducing impacts from road sedimentation.

Rating EC2.

EIS No. 20050239, ERP No. D–CGD–G39043–00, Main Pass Energy Hub Deepwater Port License Application, Proposes to Construct a Deepwater Port and Associated Anchorages, U.S. Army COE Section 10 and 404 Permits, Gulf of Mexico (GOM), southeast of the coast of Louisiana in Main Pass Lease Block (MP) 299 and from the Mississippi coast in MP 164.

Summary: EPA expressed objections to the open rack re-gasification system due to adverse environmental impacts to Gulf waters and habitat. EPA believes that these impacts can be corrected by the project modifications or other feasible technology, and requested additional information to evaluate and resolve the outstanding issues.

Rating EO2.

EIS No. 20050248, ERP No. D–COE–G39044–TX, Upper Trinity River Basin Project, To Provide Flood Damage Reduction, Ecosystem Improvement, Recreation and Urban Revitalization, Trinity River, Central City, Forth Worth, Tarrant County, TX.

Summary: EPA expressed concerns regarding the proposed project, with a focus on potential air quality impacts. EPA requested additional information regarding emissions from construction activities and how the proposed project relates to the State Implementation Plan.

Rating EC2.

EIS No. 20050251, ERP No. D–AFS–K65286–CA, Watdog Project, Proposes to Reduce Fire Hazards, Harvest Trees, Using Group Selection Methods, Feather River Ranger District, Plumas National Forest, Butte and Plumas Counties, CA.

Summary: EPA expressed environmental concerns due to the potential for adverse impacts from timber harvest and increased road density to watersheds. The final EIS should address impacts to soils, aquatic and riparian resources, wildlife habitat and the increased potential for noxious weed proliferation.

Rating EC2.

EIS No. 20050264, ERP No. D–NPS–L65491–ID, Minidoka Internment National Monument (Former Minidoka Relocation Center), General Management Plan, Implementation, Jerome County, ID.

Summary: EPA has no objections to the proposed action.

Rating LO.

EIS No. 20050268, ERP No. D–NOA–A91072–00, Programmatic—Codified Regulations at 50 CFR 300 subparts A and G Implementing Conservation and Management Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources.

Summary: EPA expressed a lack of objections to the proposed project.

Rating LO.

EIS No. 20050253, ERP No. DS–COE–D35057–MD, Poplar Island Restoration Project (PIERP) To Evaluate the Vertical and/or Lateral Expansion, Dredging Construction and Placement of Dredged Materials, Chesapeake Bay, Talbot County, MD.

Summary: EPA had no objections to the proposed project.

Rating LO.

EIS No. 20050278, ERP No. DS–AFS–L36113–WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Proposing to Amend the Umatilla National Forests Land and Resource Management Plan to Incorporate Management for Canada lynx, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA.

Summary: EPA has no objection to the proposed action.

Rating LO.

Final EISs

EIS No. 20050161, ERP No. F–AFS–L65473–OR, Rogue River-Siskiyou National Forest, Special Use Permits for Outfitter and Guide Operations on the Lower Rogue and Lower Rogue and Lower Illinois Rivers, Gold Beach Ranger District, Rogue River-Siskiyou National Forest, Curry County, OR.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050188, ERP No. F–FTA–C54009–00, Permanent World Trade Center (WTC) PATH Terminal Project, Reconstruction of a Permanent Terminal at the WTC Site in Lower Manhattan, Port Authority Trans-Hudson (PATH), Several Permits Required for Approval, The Port Authority of New York and New Jersey, NY and NJ.

Summary: EPA has no objections to the proposed project.

EIS No. 20050207, ERP No. F–AFS–L65468–00, Pacific Northwest Region Invasive Plant Program, Preventing and Managing Invasive Plants, Implementation, Portions of Del Norte and Siskiyou Counties, CA, portions of Nez Perce, Salmon, Idaho, and Adam Counties, ID, OR, and WA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050212, ERP No. F–AFS–J65438–WY, Dean Project Area, Proposes to Implement Multiple Resource Management Actions, Black Hills National Forest, Bearlodge Ranger District, Sundance, Crook County, WY.

Summary: EPA continues to express concerns about impacts to water quality from soil erosion, especially to streams already not meeting designated uses and potential adverse impacts to wildlife.

EIS No. 20050225, ERP No. F–HUD–C85045–NY, Ridge Hill Village Project, Construction, Comprehensive Development Plan, (CDP), Planned Mixed-Use Developmental District (PMD), U.S. Army COE Section 404 Permit, City of Yonkers, Westchester County, NY.

Summary: While EPA has no objection to the proposed action, EPA did highlight that the applicant must comply with Transportation Conformity and obtain a 404 permit.

EIS No. 20050280, ERP No. F–COE–E39050–FL, Herbert Hoover Dike Major Rehabilitation Evaluation Study, Proposed to Reduce the Probability of a Breach of Reach One, Lake Okeechobee, Martin and Palm Beach Counties, FL.

Summary: EPA had no objections to the proposed action.

EIS No. 20050284, ERP No. F–BOP–D80031–WV, Southern West Virginia Proposed Federal Correctional Institution, Four Alternatives Sites in Southern West Virginia, Boone County, Mingo County, Nicholas County, and McDowell County, WV.

Summary: EPA previous issues have been resolved, therefore, EPA has no objection to the action as proposed.

EIS No. 20050290, ERP No. F–NOA–L99010–AK, Pribilof Islands Setting for the Annual Subsistence Harvest of Northern Fur Seals, To Determine and Publish the Take Ranges, Pribilof Islands, AK.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050291, ERP No. F–AFS–J65437–CO, Gold Camp Road Plan, Develop a Feasible Plan to Manage the Operation of Tunnel #3 and the 8.5 mile Road Segment, Pike National Forest, Pikes Peak Ranger District, Colorado Springs, El Paso County, CO.

Summary: EPA continues to have environmental concerns due to the potential for impacts to water quality and the lack of contingent mitigation measures. EPA suggests that accelerated Best Management Practices be implemented to mitigate any further degradation.

EIS No. 20050314, ERP No. F–AFS–J65412–MT, Grasshopper Fuels Management Project, Modification of Vegetation Conditions, Reduction in Fuel Loads and Break Up Fuel Continuity, Beaverhead-Deerlodge National Forest, Dillon Ranger District, Beaverhead County, MT.

Summary: While EPA has no objection to the proposed action, EPA did request clarification regarding the sharing of aquatic monitoring results.

EIS No. 20050224, ERP No. FA–FHW–C40129–NY, NY–9A Reconstruction Project, West Thames Street to Chambers Street in Lower Manhattan the Result of September 11, 2001 Attack, Lower Manhattan Redevelopment, New York County, NY.

Summary: EPA has no objections to the proposed project.

Dated: August 23, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–17035 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6666–7]

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 08/15/2005 Through 08/19/2005. Pursuant to 40 CFR 1506.9.

EIS No. 20050343, Final EIS, BLM, ND, West Mine Area, Freedom Mine, Federal Coal Lease Application, Mercer County, ND, Wait Period Ends: 9/26/2005, Contact: Allen Ollila 701–227–7713.

EIS No. 20050344, Final EIS, NRC, WI, Generic—License Renewal for Point Beach Nuclear Plant, Units 1 and 2, Supplement 23 to NUREG–1437 (TAC Nos. MC2049 and MC2050), Lake Michigan, Manitowoc County, WI, Wait Period Ends: 09/26/2005, Contact: Stacey Imboden 301–415–2462.

EIS No. 20050345, Final Supplement, BLM, NV, Ruby Hill Mine Expansion—East Archimedes Project, Extension of Existing Open Pit and Expansion of Two Existing Waste Rock Disposal Areas, Plan-of-Operations Permit, Eureka County, NV, Wait Period Ends: 09/26/2005, Contact: Caleb Hiner 775–635–4052.

EIS No. 20050346, Draft EIS, DOA, NV, White Pine & Grant-Quinn Oil and Gas Leasing Project, Exploration and Development, Humboldt-Toiyabe National Forest, Ely Ranger District, White Pine, Nye and Lincoln Counties, NV, Comment Period Ends: 10/11/2005, Contact: Loretta Cartner 775–289–5120.

EIS No. 20050347, Draft EIS, DOE, ME, Bangor Hydro-Electric Northeast Reliability Interconnect, Construct, Connect, Operate and Maintain an Electric Transmission Line, Amend Presidential Permit (PP–89), DOE/EIS–0372, Hancock, Penobscot and Washington Counties, ME, Comment

Period Ends: 10/11/2005, Contact: Dr. Jerry Pell 202–586–3362.

EIS No. 20050348, Draft EIS, NPS, WA, Ebey's Landing National Historical Reserve General Management Plan, Implementation, Town of Coupeville, Island County, WA, Comment Period Ends: 12/01/2005, Contact: Rob Harbour 360–678–6084.

EIS No. 20050349, Draft Supplement, COE, FL, Central and Southern Florida Project, Tamiami Trail Modifications, Modified Water Deliveries to Everglades National Park, Authorized Flow of Water from WCA–3B and the L–29 Canal North of the Tamiami Trail, Dade County, FL, Comment Period Ends: 10/11/2005, Contact: Barbara Cintron 904–232–1692.

EIS No. 20050350, Draft EIS, COE, CA, Encinitas/Solana Beach Shoreline Protection Project, To Protect Public Safety and Reduce Storm-Related Damages to Coastal Structures, Cities of Encinitas and Solana Beach, San Diego County, CA, Comment Period Ends: 10/11/2005, Contact: Shannon Dellaquila 213–452–3846.

Amended Notices

EIS No. 20050202, Draft EIS, CGD, 00, Programmatic—Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions, To Increase the Oil Removal Capability, U.S. Exclusive Economic Zone (EEZ), United States, Alaska, Guam, Puerto Rico and other U.S. Territories, Comment Period Ends: 9/6/2005, Contact: Brad McKitrick 202–267–0995.

Revision of FR Notice Published on 05/27/2005: Extending CEQ Comment Period Ending 8/1/2005 has been Extended to 9/6/2005.

EIS No. 20050329, Final EIS, NPS, ID, Craters of the Moon National Monument and Preserve, Update and Consolidate Management Plans, into One Comprehensive Plan, Snake River Plain, Butte, Blaine, Lincoln, and Minidoka Counties, ID, Wait Period Ends: 09/26/2005, Contact: Adrienne Anderson 303–987–6730.

Revision of FR Notice Published on 08/12/2005: CEQ Wait Period Ending 9/12/2005 has been Reestablished to 09/26/2005. Due to Incomplete Distribution of the FEIS at the time of Filing with USEPA under Section 1506.9 of the CEQ Regulations.

Dated: August 23, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–17036 Filed 8–25–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2005—21]

Filing Dates For the California Special Election in the 48th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special general election on October 4, 2005, to fill the U.S. House of Representatives seat in the Forty-Eighth Congressional District vacated by Representative Christopher Cox. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a special runoff election will be held on December 6, 2005, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees participating in the California special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections shall file a 12-day Pre-General Report on September 22, 2005; a Pre-Runoff Report on November 24, 2005; and a Post-Runoff Report on January 5, 2006. (See chart below for the closing date for each report).

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on September 22, 2005; and a Post-General Report on November 3, 2005. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semiannual basis in 2005 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the California Special General or Special Runoff Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that support candidates in the California Special General or Special Runoff Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified federal candidate and are distributed within 60 days prior to a special general election (including a special general runoff). 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 60-day electioneering communications period in connection with the California Special General runs from August 5, 2005 through October 4, 2005. The 60-day electioneering communications period in connection with the California Special Runoff runs from October 7, 2005 through December 6, 2005.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing date	Filing date
If Only the Special General Is Held (10/04/05), Committees Involved Must File:			
Pre-General	09/14/05	09/19/05	09/22/05

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing date	Filing date
October Quarterly	09/30/05	10/15/05	[2] 10/15/05
Post-General	10/24/05	11/03/05	11/03/05
Year-End	12/31/05	01/31/06	01/31/06
If Two Elections Are Held, Quarterly Filing Committees Involved Only in the Special General (10/04/05) Must File:			
Pre-General	09/14/05	09/19/05	09/22/05
October Quarterly	09/30/05	10/15/05	[2] 10/15/05
If Two Elections Are Held, Committees Filing Semiannually Involved Only in the Special General (10/04/05) Must File:			
Pre-General	09/14/05	09/19/05	09/22/05
Year-End	12/31/05	01/31/06	01/31/06
Quarterly Filing Committees Involved in the Special General (10/04/05) and Special Runoff (12/06/05) Must File:			
Pre-General	09/14/05	09/19/05	09/22/05
October Quarterly	09/30/05	10/15/05	[2] 10/15/05.
Pre-Runoff	11/16/05	11/21/05	[2] 11/24/05
Post-Runoff	12/26/05	01/05/06	01/05/06.
Year-End	12/31/05	01/31/06	01/31/06
Semiannual Filing Committees Involved in the Special General (10/04/05) and Special Runoff (12/06/05) Must File:			
Pre-General	09/14/05	09/19/05	09/22/05
Pre-Runoff	11/16/05	11/21/05	[2] 11/24/05
Post-Runoff	12/26/05	01/05/06	01/05/06
Year-End	12/31/05	01/31/06	01/31/06
Committees Involved Only in the Special Runoff (12/06/05) Must File:			
Pre-Runoff	11/16/05	11/21/05	[2] 11/24/05
Post-Runoff	12/26/05	01/05/06	01/05/06
Year-End	12/31/05	01/31/06	01/31/06

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Notice that this deadline falls on a holiday or a weekend. Filing dates are not extended when they fall on nonworking days.

Dated: August 22, 2005.

Michael E. Toner,

Vice Chairman, Federal Election Commission.

[FR Doc. 05–16948 Filed 8–25–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 19, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Capital Bank Corporation, Raleigh, North Carolina; to merge with 1st State Bancorp, Inc., Burlington, North Carolina, and thereby indirectly acquire 1st State Bank, Burlington, North Carolina.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. ABC Bancorp, Moultrie, Georgia; to merge with First National Banc, Inc., St. Marys, Georgia, and thereby indirectly acquire First National Bank, St. Marys, Georgia, and First National Bank, Orange Park, Florida.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

UMB Financial Corporation, Kansas City, Missouri; to acquire 100 percent of the voting shares of UMB Bank Arizona, National Association, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, August 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–16965 Filed 8–25–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: September 8, 2005, 9 a.m.–3:15 p.m.; September 9, 2005, 10 a.m.–3 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the committee will hear updates and status reports from the Department on various topics including activities of the HHS Data Council, the adoption of Clinical Data Standards, and HIPAA Privacy Rule compliance. They will also hear a presentation on personal health records systems and discuss a letter to the HHS Secretary from the Workgroup on the National Health Information Infrastructure. In the afternoon the Committee will discuss its annual report along with its 7th report to Congress on implementation of HIPAA and hear an update from the Office of the National Coordinator for Health Information Technology.

On the morning of the second day the Committee will review and identify preliminary issues for action at its November meeting and hear a report from the Executive Subcommittee's retreat. There will also be briefing on the Agency for Healthcare Quality and Research's reports on health disparities and quality. In the afternoon, there will be reports from the Subcommittees and a discussion of agendas for future Committee meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity at (301) 458–4EEO (4336) as soon as possible.

Dated: August 12, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–16978 Filed 8–25–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement AA095]

Pilot Projects to Expand Existing Birth Defects Surveillance Systems To Include All Fetal Death Data; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to:

1. Evaluate the feasibility of expanding a population-based birth defects surveillance system to incorporate data from existing records on fetal deaths;
2. Monitor and report, as feasible, on the occurrence of fetal deaths in the study population;
3. Serve as a registry for etiologic studies of fetal deaths (note that no research studies are planned under this project); and
4. Serve as a resource for education and evaluation of prevention programs that aim to reduce the occurrence of fetal deaths (note that no education or prevention programs are planned under this study).

The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

In 2004, the state of Iowa passed legislation to add stillbirths to the information that the state collects for its birth registries. The Iowa birth defects monitoring program is an active ascertainment system that was established in 1983. The monitoring program currently collects data on fetal deaths related to birth defects, and can be expanded to include all fetal death data. This model program is a center for excellence in birth defects surveillance, the largest case control study on birth defects in the United States.

H.R. Conf. Rep. No. 108–792, at 1162 (2004), references the Iowa Department of Health. Applications may be submitted only by the Iowa Department of Health. No other applications are solicited.

C. Funding

Approximately $400,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to one year. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Stephanie Henry, Project Officer, 1600 Clifton Road, Mailstop E–86, Atlanta, GA 30333, Telephone: (404) 498–3809, E-mail: *SHenry@cdc.gov.*

Dated: August 22, 2005.

Alan A. Kotch,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16993 Filed 8–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancing and Strengthening the Capacity of National Faith-Based Organizations, Community Based Organizations and Non-Governmental Organizations To Respond Effectively to the HIV/AIDS Epidemic in the United Republic of Tanzania, Under the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA247.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 22, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Tanzania are to treat at least 150,000 HIV-infected individuals and care for 750,000 HIV-affected individuals, including orphans.

Purpose: Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

The purpose of this funding announcement is to build progressively an indigenous, sustainable response to the national HIV epidemic through enhancing and strengthening the capacity of national faith-based organizations (FBOs), community-based Organizations (CBOs) and non-governmental organizations (NGOs) to respond effectively to the HIV/AIDS epidemic in Tanzania.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). If an applicant proposes research activities, HHS will not review the application. For the definition of ''research,'' please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Tanzania will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for covering all program areas are as follows:

1. Work to link activities described here with related HIV care and other basic social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of faith-based organizations.
2. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s) for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access funding opportunities supported by the President's Emergency Plan and other donors.
3. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.
4. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.
5. Identify and collaborate with the established national HIV/AIDS coordinating offices in multi-sectoral and civil society organizations working in/or located in the nine regions of Tanzania.
6. Strengthen the infrastructure capacity of FBOs, CBOs and NGOs to address the National HIV/AIDS epidemic.

7. Develop and implement a feasibility study for establishing confidential voluntary counseling and testing (VCT) and prevention of mother-to-child transmission (PMTCT) centers in rural communities throughout Tanzania.

8. Develop effective, culturally and age-appropriate HIV education materials in local languages for mass distribution in communities of Tanzania in which populations are engaged in high-risk behavior.[1]

9. Mobilize communities to participate and support people living with HIV/AIDS (PLWHA) in a stigma-free environment.

10. Develop network/linkages and referral systems for care and spiritual support of those affected and infected by HIV/AIDS.

11. Conduct a series of in-country skills-building training programs to build and support a strong HIV care delivery network within communities, especially rural communities.

12. Develop curricula for life skills and conduct education in local languages on HIV/AIDS in small and rural communities.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined above. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches including:

Prevention Activities

1. Abstinence and Be Faithful Behavior-Change Interventions

a. Develop pertinent behavior-change communication (BCC) tools and strategies that build on existing tools and strategies, such as the HIV/AIDS lexicon in local languages, and that reflect and respect local cultural and religious mores.

b. Implement mass-media (especially radio) and proximity abstinence and faithfulness BCC prevention campaigns to target youth and other populations in rural settings.

2. Other Complementary Behavior-Change Interventions

Implement a condom social-marketing program specifically targeted at populations who are engaged in high-risk behaviors,[2] as part of a comprehensive community mobilization and behavior-change campaign, which must include the promotion of abstinence and fidelity, access to care and treatment, the prevention of mother-to-child HIV transmission, and the reduction of HIV-related stigma. Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined in the preceding paragraph.

Care Activities

1. Confidential HIV Counseling and Testing (VCT)

a. Develop and implement a BCC campaign to promote confidential HIV counseling and testing as a routine part of medical care and overcome barriers to HIV testing for rural and underserved populations, by building on and complementing existing tools and campaigns.

b. Increase access to confidential HIV counseling and testing for rural and underserved populations through innovative approaches, such as mobile outreach confidential HIV counseling and testing linked to existing static confidential HIV counseling and testing centers, and making confidential HIV counseling and testing a routine part of medical care, in partnership with health professionals.

2. Care and Support for Orphans and Vulnerable Children (OVC)

a. Perform a preliminary needs assessment to determine priorities for OVC in rural areas, by assuring coordination with the Tanzanian technical Ministry responsible for OVC.

b. Provide expanded care and support to meet the needs of OVC in rural areas, consistent with the major findings of the initial needs assessment; this could include small grants to rural CBOs and FBOs.

3. Palliative Care: Basic Health Care and Support

Establish and monitor comprehensive palliative care activities by using innovative approaches to increase access to underserved populations through expanded community-level care supported by and linked to existing care and/or mobile outreach clinics/teams in rural areas.

Support To Access and Adherence to Comprehensive HIV Treatment, Including Anti-Retrovirals

1. Implement treatment literacy programs to target rural and underserved populations by building on and complementing existing strategies and tools, which could include the use of the recently-developed HIV/AIDS lexicon in local languages, testimonies/advocacy by persons living with HIV/AIDS (PLWHA), the training of faith leaders and HIV village action committees.

2. Develop or enhance a functional referral network to link rural and underserved HIV-positive persons and their families to health care and other basic social services.

Strategic Information

1. Using participatory approaches, develop and implement a strategic information/monitoring and evaluation plan consistent with national policies and the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator that draws on available data and national tools and uses quantitative and qualitative methods.

2. Collect, analyze and disseminate data to ensure adequate baseline data and regular data reports to support targeted service delivery, program monitoring and evaluation, and appropriate information systems.

3. Progressively expand the capacity of the Tanzanian government and local non-governmental organizations to use data for policy and planning.

4. Report data to relevant local and national stakeholders in Tanzania, including by making it available to the general public in local languages.

Administration

Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS activities for this program are as follows:

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

[2] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

1. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Collaborate with the applicant and international partners in the development of plans for strengthening the capacity of FBO clergy, community workers and NGO staff in communities and other health professionals to identify and care for those infected and affected by HIV/AIDS.

3. Collaborate with the applicant and international partners in the delivery of integrated and comprehensive HIV care in nine regions which are HHS expansion sites for Fiscal Year (FY) 2005 (Kigoma, Ruvuma, Rukwa, Dodoma, Lindi, Mara, Shinyanga, Tanga, and Singida).

4. Provide consultation and scientific and technical assistance based on the ''HHS/CDC Global AIDS Program (GAP) Technical Strategies'' document to promote the use of best practices known at the time.

5. Facilitate in-country planning and review meetings for the purpose of ensuring coordination of country-based program technical assistance activities.

6. Function as a liaison and assist in coordinating activities, as required, between the applicant and other NGOs, FBOs, CBOs, the Government of Tanzania (GOT), and other CDC, HHS/GAP partners.

7. Provide technical assistance in developing internal capacity for administering the cooperative agreement and reporting of activities.

8. Provide strategic information support to guide program planning and targeting of resources.

9. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

10. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

11. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

12. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

13. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

14. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

15. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

16. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, and, for populations engaged in high-risk behaviors [3], correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

- Number of community outreach and/or mass-media (radio) programs that are A/B focused
- Number of individuals reached through community outreach and/or mass-media (radio) programs that are A/B focused

B. Care and Support

1. Confidential counseling and testing

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

- Number of service outlets/programs, direct and/or indirect.
- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

- Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure the following:

a. Indigenous capacity-building.

b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $8,500,000 (This amount is an estimate for the five year project period, and subject to availability of funds).

Approximate Number of Awards: One.

Approximate Average Award: $1,700,000 (This amount is an estimate for the first 12-month budget period, and includes direct and indirect costs.

[3] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

Floor of Award Range: None.

Ceiling of Award Range: $1,700,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

The following kinds of organizations may submit applications:

- Public, non-profit organizations
- Private, non-profit organizations
- Universities
- Colleges
- For-profit organizations
- Small, minority, women-owned businesses
- Community-based organizations
- Research institutions
- Hospitals
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

Applicants must also meet the following criteria:

1. Have at least three years of documented experience in developing HIV/AIDS policies and strategic plans for national civil society organizations and establishing national systems for monitoring and evaluation of the HIV/AIDS programs in Tanzania.

2. Have at least three years of documented experience in implementing cost-effective, evidence-based interventions within rural communities in Tanzania.

3. Have at least three years of documented experience in program design, planning and management of HIV/AIDS programs in rural communities within Tanzania.

4. Have extensive, well-established documented network of local FBOs, CBOs and NGOs that will enable the program to deliver interventions immediately by building upon previous accomplishments.

While both U.S.-based and Tanzanian organizations are eligible to apply, we will give preference to well-established Tanzanian organizations, legally incorporated in Tanzania, that have well-developed management and financial control systems and established HIV activities that reach to rural areas of that country.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- Applicants may be U.S.-based or Tanzanian, but we will give preference to existing organizations legally incorporated in Tanzanian with well-developed management and financial control and established HIV activities with reach to rural areas of Tanzanian. Applicant must provide documentation that substantiates eligibility criteria. Such proof could include, but is not limited to, official documents that describe legal organizational status, annual, financial, and audit reports, etc.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *www.grants.gov.*

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 35. If your narrative exceeds the page limit, we will only review the first pages within the page limit
- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need)
- Project Strategy—Description and Methodologies
- Project Goals
- Project Outputs
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
- Work Plan and Description of Project Components and Activities
- Performance Measures
- Timeline (*e.g.*, GANNT Chart)
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification
- Curriculum vitae of current staff who will work on the activity
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Letters of Support
- Evidence of Legal Organizational Structure
- Applicants must provide documentation that substantiates their well-developed management and financial controls and ability to implement HIV activities with reach to rural areas of Tanzania. Such proof could include, but is not limited to, annual, financial, and audit reports, etc.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 22, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United states or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required) relating to the management of sub-grants to local organizations and improving their capacity.
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S.

Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *www.grants.gov.* You will be able to download a copy of the application package from *www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *www.support@grants.gov,* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management—AA247, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Technical Approach (25 points)

Does the applicant's proposal include an overall design strategy, including measurable time lines? Does the proposal address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

2. Understanding of the Problem (20 points)

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to

develop a comprehensive, collaborative project to reach underserved populations in Tanzania and meet the goals of the Emergency Plan? Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? Does the proposal specifically include a description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects?

3. Ability to Carry Out the Project (20 points)

Does the applicant have demonstrated capability to achieve the purpose of the project and prior experience in collaborating with other FBOs, CBOs and NGOs?

4. Personnel (20 points)

Are the professional personnel involved in this project qualified, including evidence of local language skills and of experience in working with HIV/AIDS prevention activities.

5. Plans for Administration and Management of Projects (15 points)

Does the applicant provide a clear plan for the administration and management of the proposed activities, to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

6. Budget (not scored)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities? Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Tanzania?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Tanzanian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1–Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Tanzania.

f. Additional Requested Information.

2. Annual progress report, due no later than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Tanzania.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, due no later than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Cecil Threat, Project Officer, Global AIDS Program, c/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521–2140, Telephone: 255 22 212 1407, Cell: 255 744 222986, Fax: 255 22 212 1462, e-mail: *Cthreat@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road,

Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *Swynn@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the web site of the HHS Office of Global Health Affairs, Internet address: *www.globalhealth.gov.*

Dated: August 22, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16990 Filed 8–25–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10166]

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:* New Collection; Title of Information Collection: Payment Error Rate Measurement in Medicaid and State Children's Health Insurance Program (SCHIP); Form No.: CMS–10166 (OMB # 0938–NEW); Use: The information collected will be used by CMS for, among other purposes, estimating improper payments in Medicaid and SCHIP as required by the Improper Payments Information Act (IPIA) of 2002. To implement the IPIA in Medicaid and SCHIP, CMS will use a national contracting strategy to produce Medicaid and SCHIP error rates. CMS plans to adopt this approach based on a recommendation that CMS hire a Federal contractor to perform payment error rate measurement. This recommendation was made during public comment on the proposed rule entitled ''Medicaid Program and State Children's Health Insurance Program (SCHIP): Payment Error Rate Measurement'' which published on August 27, 2004 (69 FR 52620), that contained provisions for all states to produce error rates in Medicaid and SCHIP.

The new error measurement methodology will rely on a Federal contractor to conduct medical and data processing reviews using generally the same methodologies developed during the past pilot projects and produce State-specific and national Medicaid and SCHIP error rates based on reviews conducted each Federal fiscal year (FY). We expect to begin measuring improper payments made in Medicaid fee-for-service in FY 2006. We have not yet determined the best method to measure improper payments made in Medicaid and SCHIP managed care. However, under the national contracting strategy, we expect the Federal contractor will implement these reviews and States will submit the same information listed below except for medical policies. (Managed care claims are not subject to medical reviews so there is no burden to providers to submit medical records.) Similarly, we are considering the best approach to measure improper payments based on eligibility errors within the confines of current law and with minimal budgetary impact. It is possible that States will be required to conduct at least part of the eligibility tests. However, this notice is not intended to address the cost or burden estimates associated with either the managed care or eligibility reviews in Medicaid or SCHIP.

Initially, based on States' annual medical expenditures from the previous year, the Federal contractor will group all States into three equal strata of small, medium and large and select a random sample of an estimated 18 States to be reviewed for each program. (However, CMS may revise its sampling methodology in the future and may use a methodology to select States that will ensure each State is selected at least every three years but that no State is sampled more than once every three years. The error rates produced by this selection methodology will provide the State with a State-specific error rate estimated to be within 3% precision at the 95% confidence level.) The States selected for review would submit to the Federal contractor, annual expenditures, quarterly stratified claims data, medical policies (which include State statutes, regulations, individual Medicaid Provider Manual and Administrative Directives as well as other information that the contractor may need to determine errors in the medical reviews), and other information so that the contractor can determine the specific State sample sizes and conduct medical and data processing reviews on the sampled claims. In addition, the contractor will request medical records from providers whose claims were sampled; the medical records are needed to support the medical reviews. CMS is not requiring States and providers to use a specific form, *e.g.*, facsimile, or electronic to transmit the information. Based on the reviews, the contractor will calculate State-specific error rates which will serve as the basis for calculating national Medicaid and SCHIP error rates. Each State reviewed also will submit a corrective action plan to CMS that outlines its plans to develop, implement and monitor corrective actions designed to address error causes for purposes of reducing the State's error rate. *Frequency:* Reporting—On occasion and quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 36; *Total Annual Responses:* 5076; *Total Annual Hours:* 58,680.

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/regulations/pra/*, 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 within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Katherine Astrich, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 24, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–17100 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1486–N]

Medicare Program; Announcement of New Members of the Advisory Panel on Ambulatory Payment Classification (APC) Groups

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

ACTION: Notice.

SUMMARY: The purpose of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare and Medicaid Services (CMS) concerning the clinical integrity of the APC groups and their associated weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital Outpatient Prospective Payment System (OPPS) through rulemaking. This notice announces the new members selected to serve on the Panel.

FOR FURTHER INFORMATION CONTACT: For inquiries about the Panel, please contact the Designated Federal Officer (DFO): Shirl Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. Phone (410) 786–4474.

E-mail Address for comments is: *APCPanel@cms.hhs.gov.* News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The CMS Advisory Committees' Information Line is 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: For additional information on APC meeting agendas and updates to the Panel's activities, search our Web site at: *http://www.cms.hhs.gov/faca/apc/default.asp.* To obtain Charter copies, search our Web site at *http://www.cms.hhs.gov/faca* or e-mail the Panel DFO.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (HHS) (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act, as amended and redesignated by sections 201(h) and 202(a)(2) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), respectively, to establish and consult with an expert, outside advisory panel on APC groups. The APC Panel meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and the Administrator of the Centers for Medicare and Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the groups and their associated weights. All members must have technical expertise that will enable them to participate fully in the work of the Panel. The expertise encompasses hospital payment systems, hospital medical-care delivery systems, outpatient payment requirements, APCs, Physicians' Current Procedural Terminology Codes (CPTs), the use and payment of drugs and medical devices in the outpatient setting, and other forms of relevant expertise. It is not necessary that any one member be an expert in all areas.

We will consider the technical advice provided by the Panel as we prepare the final rule that updates the OPPS payment rates for the next calendar year. The Secretary re-chartered the Panel on November 1, 2004.

II. Announcement of New Members

The Panel may consist of a Chair and up to 15 representatives who are full-time employees (not consultants) of Medicare providers, which are subject to the OPPS. Panel members serve without compensation, according to an advance written agreement; however, travel, meals, lodging, and related expenses are reimbursed in accordance with standard Government travel regulations. CMS has a special interest for ensuring that women, minorities, and the physically challenged are adequately represented on the Panel.

The Secretary, or his designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership.

The Panel presently consists of the following members and a Chair:

- Edith Hambrick, M.D., J.D., Chair.
- Marilyn Bedell, M.S., R.N., O.C.N.
- Albert Brooks Einstein, Jr., M.D.
- Sandra J. Metzler, M.B.A., R.H.I.A., C.P.H.Q.
- Frank G. Opelka, M.D., F.A.C.S.
- Louis Potters, M.D., F.A.C.R.
- Lou Ann Schraffenberger, M.B.A., R.H.I.A., C.C.S.-P.
- Judie S. Snipes, R.N., M.B.A., F.A.C.H.E.
- Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.
- Timothy Gene Tyler, Pharm.D.

On February 25, 2005, we published a notice in the **Federal Register** (70 FR 9336) requesting nominations to the Panel to replace the six Panel members whose terms expired on March 31, 2005. In order to obtain additional nominees whose expertise matched the needs of the Panel, we published a second notice in the **Federal Register** on April 8, 2005 (70 FR 18028) extending the deadline. As a result of these two notices, the six new 4-year appointments to the APC Panel effective August 17, 2005, and ending August 16, 2009, are as follows:

- Gloryanne Bryant, B.S., R.H.I.A., R.H.I.T., C.C.S.
- Hazel Kimmel, R.N., C.C.S., C.P.C.
- Thomas M. Munger, M.D., F.A.C.C.
- James V. Rawson, M.D.
- Kim Allan Williams, M.D., F.A.C.C., F.A.B.C.
- Robert Matthew Zwolak, M.D., Ph.D., F.A.C.S.

Authority: Section 1833(t) of the Act (42 U.S.C. 1395l(t)). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–16798 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2209–N]

RIN 0938–AJ74

Medicaid Program; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits

AGENCY: Notice.

SUMMARY: This notice announces the final Federal share disproportionate share hospital (DSH) allotments for Federal fiscal years (FFYs) 2003 and

2004, and the preliminary Federal share DSH allotments for FFY 2005. It also announces the final FFYs 2003 and 2004, and the preliminary FFY 2005, limitations on aggregate DSH payments that States may make to institutions for mental disease (IMDs) and other mental health facilities. This notice also includes a background describing the methodology for determining the amounts of States' FFY DSH allotments for FFY 1998 and thereafter.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

*A. Disproportionate Share Hospital (DSH) Allotments and Institutions for Mental Disease (IMD) DSH Limits Published in the **Federal Register** on October 8, 1998*

We published a notice in the October 8, 1998 **Federal Register** (63 FR 54142) that announced the Federal share DSH allotments for FFYs 1998 through 2002 and the IMD DSH limits for FFYs 1998 and 1999. The DSH allotments and IMD DSH limits published in that notice specified and were determined in accordance with sections 1923(f) and 1923(h) of the Social Security Act (the Act), as amended by the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33 (enacted on August 5, 1997). The notice also reflected the FFY 1998 DSH allotment for one State, specified in accordance with section 601 of Pub. L. 105–78 (enacted on November 13, 1997).

Additional legislative changes relating to the amounts or methodologies for calculating the States' DSH allotments or IMD DSH limits were made to the Act since the publication of the October 8, 1998 notice. In this section and in section II of this notice, we describe subsequent legislative changes related to the DSH calculation of the DSH allotments and IMD DSH limits for fiscal years.

B. Disproportionate Share Hospital Allotments for Federal Fiscal Years (FFYs) 1998 Through 2000

Section 4721(a) of the BBA amended section 1923(f) of the Act to require that Federal Medicaid DSH expenditures be limited by the statutorily defined Federal share DSH allotments for FFYs 1998 through 2002 specified in a chart in section 1923(f)(2) of the Act. Section 601 of Pub. L. 105–78 amended the DSH allotment contained in this chart for the State of Minnesota for FFY 1998. On October 8, 1998, we published a notice of the statutorily prescribed DSH allotments for all States for FFYs 1998 through 2002, in accordance with the amounts specified in the chart at section 1923(f)(2) of the Act, as established by the BBA and as amended by Pub. L. 105–78. Subsequent to the publication of the DSH allotments for these years, a number of legislative actions revised the DSH allotments specified in the chart at section 1923(f)(2) of the Act, for certain States. Specifically, sections 702, 703, and 704 of Pub. L. 105–277 (enacted on October 21, 1998) amended the FFY 1999 DSH allotments for Minnesota, New Mexico, and Wyoming, respectively, and section 601(a) of the Medicare, Medicaid, SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113, enacted on November 29, 1999) amended the FFYs 2000, 2001, and 2002 DSH allotments for the District of Columbia, Minnesota, New Mexico, and Wyoming.

C. DSH Allotments for FFYs 2001 and 2002

Section 701(a) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554, enacted on December 21, 2000) added a new section 1923(f)(4) of the Act that provided for a ''Special Rule for Fiscal Years 2001 and 2002,'' under which States' DSH allotments for FFY 2001 and 2002 would be determined through the application of a methodology. The DSH allotments for FFYs 2001 and 2002 as calculated under this methodology superseded the DSH allotments for those years specified in the chart at section 1923(f)(2) of the Act.

Under section 1923(f)(4) of the Act, the DSH allotments for FFY 2001 and FFY 2002 were determined by increasing the States' prior FFY DSH allotments by the Consumer Price Index for all Urban Consumers (CPI–U) for the prior fiscal year, subject to the limitation that an increase to a State's DSH allotment for a fiscal year could not result in the DSH allotment exceeding the greater of the State's DSH allotment for the previous fiscal year or 12 percent of the State's total medical assistance expenditures for the allotment year (referred to as the 12 percent limit). For example, if increasing a State's FY 2001 DSH allotment by the CPI–U for FY 2001 resulted in an amount that was higher than 12 percent of the State's total medical assistance expenditures for FY 2002, and the 12 percent limit was higher than the States' FY 2001 DSH allotment, the State's FY 2002 DSH allotment would be limited to the 12 percent limit. The application of this special rule for FFY 2001 and FFY 2002 had the effect of increasing States' DSH allotments for those years, as compared to the allotments they would have received under the chart at section 1923(f)(2) of the Act. In fact, the chart contained at section 1923(f)(2) of the Act generally would have provided for a decrease or no change in States' DSH allotments over the fiscal years 1998 through 2002.

BIPA also added a new section 1923(f)(5) of the Act (Pub. L. 106–554 section 701(a)(2)), which established a ''Special Rule for Extremely Low DSH States.'' Under this rule, States with FFY 1999 DSH expenditures that were greater than zero percent and less than 1 percent of the States' FFY 1999 total medical assistance expenditures were considered to be ''low-DSH States.'' Under section 1923(f)(5) of the Act, the Low-DSH States' FFY 2001 DSH allotments were increased to 1 percent of the States' total FFY 2001 medical assistance expenditures. The Low-DSH States' increased FFY 2001 DSH allotments were the basis for calculating the States' FFY 2002 DSH allotments. That is, similar to the methodology applied for determining the other (non-Low-DSH) States' allotments, the Low-DSH States' FFY 2002 allotments were determined by increasing their FFY 2001 allotment (as determined under the Low-DSH provision at section 1923(f)(5) of the Act) by the CPI–U for the prior fiscal year, subject to the 12 percent limit.

D. DSH Allotments for FFY 2003

Section 1923(f)(3) of the Act, as established by the BBA and amended by the BIPA, provided for States' FFY 2003 DSH allotments to be calculated by increasing their FFY 2002 allotments (as specified in the chart in section 1923(f)(2) of the Act) by the CPI–U for the prior fiscal year, subject to the 12 percent limit. That is, the FFY 2003 allotments were not based on the FFY 2002 DSH allotments as were determined under section 1923(f)(4) of the Act. Since the FFY 2002 DSH allotments specified in the chart in section 1923(f)(2) of the Act were lower than the actual FFY 2002 DSH allotments (determined under section 1923(f)(4) of the Act), in general, States' FFY 2003 DSH allotments were lower than their FFY 2002 allotments. The exception to this were the FFY 2003 DSH allotments for the Low-DSH States. Under the Low-DSH State provision, the Low-DSH States' FFY 2003 allotments were determined by increasing their actual FFY 2002 DSH allotments (not their FFY 2002 allotments specified in the chart in section 1923(f)(2) of the Act) by the CPI–U for the previous fiscal year. Therefore, Low-DSH States' DSH

allotments increased (in general by the CPI–U) from FFY 2002 to FFY 2003.

E. DSH Allotments for FFY 2004

Section 1001(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003) amended section 1923(f)(3) of the Act to provide for a ''Special, Temporary Increase In Allotments On A One-Time, Non-Cumulative Basis.'' Under this provision, States' FFY 2004 DSH allotments were determined by increasing their FFY 2003 allotments by 16 percent, and the fiscal year DSH allotment amounts so determined were not subject to the 12 percent limit.

F. DSH Allotments for Non-Low DSH States for FFY 2005, and Fiscal Years Thereafter

Under the methodology contained in section 1923(f)(3)(C) of the Act, as amended by the MMA, the non-Low-DSH States' DSH allotments for FFY 2005 and subsequent fiscal years continues at the same level as the States' DSH allotments for FFY 2004 until a ''fiscal year specified'' occurs. The ''fiscal year specified'' is the first fiscal year for which the Secretary estimates that a State's DSH allotment equals (or no longer exceeds) the DSH allotment as would have been determined under the statute in effect before the enactment of the MMA. We determine whether the fiscal year specified has occurred under a special parallel process. Specifically, under this process, a DSH allotment is determined for FFYs after 2003 by increasing the State's DSH allotment for the previous fiscal year by the CPI–U for the prior fiscal year, subject to the 12 percent limit. The fiscal year specified will be the fiscal year when the DSH allotment calculated under this special parallel process finally equals or exceeds the FY 2004 DSH allotment, as determined under the MMA provisions. Once the fiscal year specified occurs for a State, that State's fiscal year DSH allotment will be calculated by increasing the State's previous actual fiscal year DSH allotment (which would be equal to the FY 2004 DSH allotment) by the CPI–U, subject to the 12 percent limit. The following example illustrates how the fiscal year DSH allotment would be calculated for fiscal years after FFY 2004.

Example —A State's FFY 2003 DSH allotment is $100 million. Under the MMA, the State's FFY 2004 DSH allotment would be $116 million ($100 million increased by 16 percent). The State's DSH allotment for subsequent fiscal years would continue at $116 million for fiscal years following FFY 2004 until the ''fiscal year specified'' occurs. In a separate parallel process, we determine whether the fiscal year specified has occurred by calculating the State's DSH allotments in accordance with the statute in effect before the enactment of the MMA. Under this special process, we determine the State's DSH allotment each fiscal year by increasing the State's DSH allotment for the previous fiscal year (as also determined under the special parallel process) by the CPI–U for the previous fiscal year, and subject to the 12 percent limit. Assume for purposes of this example that, in accordance with this special process, the State's FFY 2007 DSH allotment was determined to be $115 million and the CPI–U for FFY 2007 was 2 percent. Therefore, under the special parallel process, the State's FFY 2008 DSH allotment would be $117.3 million (that is, $115 million increased by the 2 percent CPI–U for FFY 2007). Since $117.3 is greater than $116 million (the FFY 2004 DSH allotment calculated under the MMA), we would determine that FFY 2008 is the ''fiscal year specified.'' We would then determine the State's FFY 2008 allotment as the FFY 2007 actual allotment ($116 million) increased by the CPI–U for FFY 2007 (2 percent). Therefore, the State's FFY 2008 DSH allotment would be $118.32 million ($116 million increased by 2 percent); for purposes of this example, the application of the 12 percent limit has no effect. For FFY 2009 and thereafter, the State's DSH allotment would be calculated by increasing the previous fiscal year's DSH allotment by the CPI–U, subject to the 12 percent limit.

However, as amended by the MMA, section 1923(f)(5)(B) of the Act contains new criteria for determining whether a State is a Low-DSH State, beginning with FFY 2004. This provision is described in section I.G below.

G. DSH Allotments For Low-DSH States for FFYs 2004, and Fiscal Years Thereafter

The MMA amended section 1923(f)(5) of the Act regarding the calculation of the fiscal year DSH allotments for ''Low-DSH'' States for FFY 2004 and subsequent fiscal years. Specifically, under section 1923(f)(5)(B) of the Act, as amended by the MMA, a State is considered a Low-DSH State for FFY 2004 if its total DSH payments under its State plan for FFY 2000 (including Federal and State shares) as reported to us as of August 31, 2003, are greater than 0 percent and less than 3 percent of the State's total FFY 2000 expenditures under its State plan for medical assistance. For States that meet the new Low-DSH criteria, their FFY 2004 DSH allotments are calculated by increasing their FFY 2003 DSH allotments by 16 percent. Therefore, for FFY 2004, Low-DSH States' fiscal year DSH allotments are calculated in the same way as the DSH allotments for regular States, which under the Act section 1923(f)(3) get the special temporary increase for FFY 2004.

Furthermore, for States meeting the new MMA Low-DSH definition, the DSH allotments for FFYs 2005 through 2008 will continue to be determined by increasing the previous fiscal year's DSH allotment by 16 percent. The Low-DSH States' DSH allotments for FFYs 2004 through 2008 are not subject to the 12 percent limit. The Low-DSH States' DSH allotments for FFYs 2009 and subsequent fiscal years are calculated by increasing those States' DSH allotments for the prior fiscal year by the CPI-U for that prior fiscal year. For FFYs 2009 and thereafter, the DSH allotments so determined would be subject to the 12 percent limit.

H. IMD DSH Limits for FFYs 1998 and Thereafter

Section 4721(b) of the BBA added section 1923(h) to the Act which provides that Federal financial participation (FFP) is not available for DSH payments to IMDs and other mental health facilities that are in excess of State-specific aggregate limits.

In implementing the IMD DSH limit under the BBA in the October 8, 1998 **Federal Register** notice as codified in section 1923(h)(1) of the Act, we indicated that the aggregate limit of IMD and other mental health facilities to be the lesser of a State's FFY 1995 total computable (State and Federal share) IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment (as reported on the Form CMS–64 as of January 1, 1997), or the amount equal to the product of the State's current year total computable DSH allotment and the applicable percentage.

Each State's IMD limit on DSH payments to IMDs and other mental health facilities is calculated by first determining the State's total computable DSH expenditures attributable to the FFY 1995 DSH allotment for mental health facilities and inpatient hospitals. This was based on the total computable DSH expenditures reported by the State on the Form CMS–64 as mental health DSH and inpatient hospital as of January 1, 1997.

Once we determine the total computable amount of DSH expenditures applicable to the FFY 1995 DSH allotment, we then calculate an ''applicable percentage.'' The applicable percentage for FFY 1998 through FFY 2000 (1995 IMD DSH percentage) is calculated by dividing the total computable amount of IMD and mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment by the total computable amount of all DSH

expenditures (mental health facility plus inpatient hospital) applicable to the FFY 1995 DSH allotment. For FFY 2001 and thereafter, the applicable percentage is defined as the lesser of the applicable percentage as calculated above (for FFYs 1998 through 2001) or 50 percent for FFY 2001; 40 percent for FFY 2002; and 33 percent for each subsequent FFY.

The applicable percentage is then applied to each State's total computable FFY DSH allotment for the current FFY. The State's total computable FFY DSH allotment is calculated by dividing the State's Federal share DSH allotment for the FFY by the State's Federal medical assistance percentage (FMAP) for that FFY.

In the final step of the calculation, the State's total computable IMD DSH limit for the FFY is set at the lesser of the product of a State's current fiscal year total computable DSH allotment and the applicable percentage for that fiscal year, or the State's FFY 1995 total computable IMD and other mental health facility DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64.

The MMA legislation did not amend the Medicaid statute with respect to the calculation of the IMD DSH limit.

*I. DSH Allotments and IMD DSH Limits Published in the **Federal Register** on March 26, 2004*

On March 26, 2004, we published in the **Federal Register** (69 FR 15850) the final Federal share DSH allotments for FFYs 2001 and 2002, and the preliminary Federal share DSH allotments for FFY 2003 (as determined under the Medicaid statute in effect before the enactment of the MMA). The March 26, 2004 notice also announced the preliminary FFY 2004 Federal share DSH allotments (as determined under the MMA provisions).

The March 26, 2004 **Federal Register** notice also announced the final FFYs 2000, 2001, and 2002, and the preliminary FFYs 2003 and 2004, limitations on aggregate DSH payments that States may make to IMDs and other mental health facilities.

The March 26, 2004 **Federal Register** notice also described the methodologies for determining the amounts of States' FFY DSH allotments for FFY 2001 and thereafter, and it republished the Federal share DSH allotments for FFYs 1998 through 2000, and the final FFYs 1998 and 1999 limitations on aggregate DSH payments that States may make to IMDs and other mental health facilities.

*J. Publication in the **Federal Register** of Preliminary and Final Notice for DSH Allotments and IMD DSH Limits*

In general, we initially determine States' DSH allotments and IMD DSH limits for a fiscal year using estimates of medical assistance expenditures, including DSH expenditures in their Medicaid programs. These estimates are provided by States each year on the August quarterly Medicaid budget reports (Form CMS–37) before the Federal fiscal year for which the DSH allotments and IMD DSH limits are being determined. The DSH allotments and IMD DSH limits determined using these estimates are referred to as ''preliminary.'' Only after we receive States' reports of the actual related medical assistance expenditures through the quarterly expenditure report (Form CMS–64), are the ''final'' DSH Allotments and IMD DSH limits determined. In this regard, the DSH allotments for FFY 1998 through FFY 2000, as published in the October 8, 1998 **Federal Register** notice were considered as final since these allotments were prescribed in the chart in section 1923(f)(2) of the Act. Similarly, the FFY 1998 and FFY 1999 IMD DSH limits published in the October 8, 1998 **Federal Register** were also considered as final, since these limits were based on the actual expenditures from FFY 1995 and the final FFY 1998 and FFY 1999 DSH allotments.

As indicated in the previous paragraph I, the notice published in the **Federal Register** on March 26, 2004 announced the *final* FFY 2001 and 2002 DSH allotments (since they were based on the actual related expenditures), the *preliminary* FFY 2003 and 2004 DSH allotments (since they were based on estimated expenditures), the *final* FFY 2000 through 2002 IMD DSH limits (based on the final DSH allotments for those fiscal years), and the *preliminary* FFY 2003 and 2004 IMD DSH limits (since they were based on the preliminary DSH allotments for those years).

This notice announces the *final* FFYs 2003 and 2004 DSH allotments and the *final* FFYs 2003 and 2004 IMD DSH limits (since they are based on the actual related expenditures), the *preliminary* FFY 2005 DSH allotments (based on estimates), and the *preliminary* IMD DSH limits (since they are based on the preliminary DSH allotments for FFY 2005).

II. Calculation of the Final FFY 2003 Federal Share State DSH Allotments, the Final FFY 2004 Federal Share State DSH Allotments, and the Preliminary FFY 2005 Federal Share State DSH Allotments

Charts 1 and 2 of the Addendum to this notice provide the States' ''final'' FFY 2003 and FFY 2004 DSH allotments. The final FFY 2003 DSH allotments for each State were computed using the States' expenditure reports (Form CMS–64) for FFY 2003. As required by the provisions of the MMA, the final FFY 2004 DSH allotments for the ''Low-DSH'' States and all the other States were calculated by increasing the FFY 2003 DSH allotments by 16 percent. The definition and determination of the ''Low-DSH'' States under the MMA provisions were explained and published in the March 26, 2004 **Federal Register** notice.

Chart 3 of the Addendum to this notice provides the States' ''preliminary'' FFY 2005 DSH allotments. These preliminary allotments were determined using the States' August 2004 expenditure estimates submitted by the States on the Form CMS–37. We will publish the final FFY 2005 DSH allotments for each State following receipt of the States' four quarterly Medicaid expenditure reports (Form CMS–64) for FFY 2005. As discussed earlier in this notice, the criteria and determination of the ''Low-DSH'' States were also explained and published in the March 26, 2004 **Federal Register** notice.

III. Calculation of the FFYs 2000 Through 2005 IMD DSH Limits

Section 1923(h) of the Act specifies the methodology to be used to establish the limits on the amount of DSH payments that a State can make to IMDs and other mental health facilities. FFP is not available for IMD/DSH payments that exceed the lesser of the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported to us on the Form CMS–64 as of January 1, 1997; or the amount equal to the product of the State's current FFY total computable DSH allotment and the applicable percentage. The amounts of the limits on IMD DSH expenditures were made available to the States as part of their CMS–64 report. We are publishing the final FFY 2003 and FFY 2004 IMD DSH limit limits, and the preliminary FFY 2005 IMD DSH limit along with an explanation of the calculation of these limits.

For FFY 2000, the applicable percentage was computed as the ratio of—

(1) The State's FFY 1995 total computable (Federal and State share) mental health DSH payments applicable to the State's FFY 1995 DSH allotment and as reported on the Form CMS–64 as of January 1, 1997; compared to

(2) The State's FFY 1995 total computable amount of all DSH expenditures (mental health facility and inpatient hospital) applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997.

For FFY 2000, the applicable percentage was calculated and applied to the State's FFY 2000 total computable DSH allotment. States' total computable FFY 2000 DSH allotment was calculated by dividing each State's Federal share DSH allotment for FFY 2000 by the State's Federal medical assistance percentage (FMAP) for FFY 2000. This result was then compared to the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997. The lesser of these two amounts was the State's limitation on total computable IMD/DSH expenditures for FFY 2000.

For FFY 2001, the applicable percentage was the lesser of 50 percent or the 1995 DSH IMD percentage of the amount computed for FFY 2000.

This percentage was applied to the State's FFY 2001 total computable DSH allotment. This result was then compared to the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997. The lesser of these two amounts was the State's limitation on total computable IMD/DSH expenditures for FFY 2001.

For FFY 2002, the applicable percentage was the lesser of 40 percent or the 1995 DSH IMD percentage of the amount computed for FFY 2000. This percentage was applied to the State's FFY 2002 total computable DSH allotment. This result was then compared to the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997. The lesser of these two amounts was the State's limitation on total computable IMD/DSH expenditures for FFY 2002.

For FFY 2003 and following fiscal years, the applicable percentage was the lesser of 33 percent or the 1995 DSH IMD percentage of the amount computed for FFY 2000. This percentage was applied to the State's fiscal year total computable DSH allotment. This result was then compared to the State's FFY 1995 total computable mental health DSH expenditures applicable to the State's FFY 1995 DSH allotment as reported on the Form CMS–64 as of January 1, 1997. The lesser of these two amounts was the State's limitation on total computable IMD/DSH expenditures for FFY 2003 and following fiscal years.

Charts 4 through 6 of the Addendum to this notice detail each State's final IMD/DSH limitation for FFYs 2003 and 2004, and the preliminary IMD/DSH limitation for FFY 2005, respectively, in accordance with section 1923(h) of the Act.

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. 3501).

V. Regulatory Impact Statement

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612, requires a regulatory flexibility analysis for every rule subject to proposed rulemaking procedures under the Administrative Procedure Act, 5 U.S.C. 553, unless we certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities. However, providers with receipts ranging from less than $6 million to less than $29 million depending on their provider type are considered small entities (65 FR 69432, November 17, 2000). Due to the various controlling statutes, the effects on providers are not a result of any independent regulatory impact and not this notice. The purpose of the notice is to simply announce the latest distributions as required by the statute.

Additionally, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The BBA and the BBRA set statutorily defined limits on the amount of Federal share DSH expenditures available for FFYs 1998 through 2002.

The BIPA amended sections of the Act that set forth these statutorily defined Federal DSH allotments.

Based on these amendments to the DSH allotment provisions of the Medicaid statute, the limits initially imposed by the BBA and the BBRA had a negative impact on the availability of FFP to States by reducing the DSH allotments available to States, thus potentially negatively impacting the availability of Medicaid expenditures to hospitals, especially IMDs. However, the BIPA reduced the Federal savings, thus increasing the amount of Federal funding available to States under the DSH program. Finally, section 1001 of the MMA increased the DSH allotment for States beginning with fiscal year 2004. While overall the statute mandated some reduction in DSH payments, we do not believe that this notice will have a significant economic impact on a substantial number of small entities because it reflects no new policies or procedures.

In section 202, the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice has no consequential effect on State, local, or tribal governments, or the private sector, and will not create an unfunded mandate.

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism. We have determined that it does not significantly affect the rights, roles, and responsibilities of States.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Addendum

This addendum contains the charts 1 through 6 (including associated keys) that are referred to in the preamble of this notice.

CHART 1.—FINAL 2003 DSH ALLOTMENTS

[Key to the chart of the final FFY 2003 DSH Allotments]

Column	Description
Column A	State
Column B	FY 2003 FMAPS—FFY 2003 Federal Medical Assistance Percentage (FMAP).
Column C	FY 2002 Federal Share DSH Allotment—This column contains the final FFY 2002 DSH allotments from section 1923(f)(2) of the Act.
Column D	FY 2002 DSH Allotment INCR. By CPIU. This column contains the FFY 2002 DSH allotments in Column C increased by the CPIU for that fiscal year.
Column E	FY 2003 TC MAP EXP including DSH. This column contains the total computable medical assistance expenditures including DSH for FFY 2003.
Column F	FY 2003 TC DSH Expenditures. This column contains the actual total computable DSH expenditures for FFY 2003.
Column G	FY 2003 TC MAP EXP. Net of DSH. This column contains the total computable medical assistance expenditures, net of DSH expenditures, for FFY 2003.
Column H	12 Percent Limit (IN FS). This column contains the 12 Percent Limit; this is a Federal share amount.
Column I	Greater of COL H OR COL C. This column contains an amount which is the greater of Column H (the 12 percent limit) or Column C (the Federal share FFY 2002 DSH allotment).
Column J	FY 2003 DSH Allotments Federal Share. This column contains the lesser of Column I or Column D This is the final Federal share DSH Allotment for FY 2003.

CHART 2.—FINAL DSH ALLOTMENTS FOR FISCAL YEAR 2004

[Key to the chart of the final FFY 2004 DSH Allotments. The final FFY 2004 DSH allotments for the regular States are presented in the top section of this chart and the final FFY 2004 DSH allotments for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column A	State.
Column B	FY 2003 Final Federal Share DSH Allotment. This column contains the final FFY 2003 DSH allotments.
Column C	FY 2004 FS DSH Allotment = COL B × 116. This column contains the FFY 2003 DSH allotments in Column C increased by 16 percent.
Column D	MMA Low DSH Status. This column indicates the LOW DSH Status of each State.

CHART 3.—PRELIMINARY DSH ALLOTMENTS FOR FY 2005

[Key to the Chart of the Preliminary FFY 2005 DSH Allotments. The preliminary FFY 2005 DSH Allotments for the regular States are presented in the top section of this chart and the preliminary FFY 2005 DSH Allotments for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
For Non-Low-DSH States:	
Column A	State.
Column B	Final FY 2004 DSH Allotment Federal Share—This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2005 DSH Allotment Federal Share—This column contains the preliminary FFY 2005 DSH Allotments.
Column D	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.
For Low-DSH States:	
Column A	State.
Column B	Prior FY DSH Allotment—This column contains the final FFY 2004 DSH Allotments.
Column C	FY 2005 DSH Allotments Federal Share—This column contains the preliminary FFY 2005 DSH Allotments = Column B multiplied by 1.16.
Column D	MMA Low-DSH Status—This column indicates the MMA Low-DSH Status of each State.

CHART 4.—FINAL FFY 2003 IMD DSH LIMITS

[Key to the Chart of the FFY 2003 IMD Limitations]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).

CHART 4.—FINAL FFY 2003 IMD DSH LIMITS—Continued

[Key to the Chart of the FFY 2003 IMD Limitations]

Column	Description
Column E	Applicable Percentage Col. C/D. This column contains the ''applicable percentage'' representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D). Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2003 Federal Share DSH Allotment. This column contains the States' final FFY 2003 DSH Allotments.
Column G	FFY 2003 FMAP.
Column H	FY 2003 DSH Allotment Total Computable Col. F/G. This column contains FFY 2003 total computable DSH Allotment (determined as Column F/Column G).
Column I	Applicable Percent of FY 2003 DSH Allotment. Col. E x H. This column contains the applicable percent of FFY 2003 total computable DSH Allotment (calculated as Column E x Column H).
Column J	FY 2003 IMD DSH Limit Total Computable Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2003 IMD DSH Limit Federal Share, Col. G x J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G x Col. J).

CHART 5.—FINAL FFY 2004 IMD DSH LIMITS

[Key to the Chart of the FFY 2004 IMD Limitations.—The final FFY 2004 IMD DSH Limits for the regular States are presented in the top section of this chart and the final FFY IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).
Column E	Applicable Percentage Col C/D. This column contains the ''applicable percentage'' representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2004 Federal Share DSH Allotment. This column contains the States' final FFY 2004 DSH allotments.
Column G	FFY 2004 FMAP.
Column H	FY 2004 DSH Allotment Total Computable. Col. F/G. This column contains FFY 2004 total computable DSH allotment (determined as Column F/Column G).
Column I	Applicable Percent of FY 2004 DSH Allotment. Col. E × H. This column contains the applicable percent of FFY 2004 total computable DSH allotment (calculated as Column E × Column H).
Column J	FY 2004 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2004 IMD DSH Limit Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G ×Col. J).
Column L	LOW DSH Status. This column contains Low DSH status for each State.

CHART 6.—PRELIMINARY FFY 2005 IMD DSH LIMITS

[Key to the Chart of the FFY 2005 IMD Limitations.—The preliminary FFY 2005 IMD DSH Limits for the regular States are presented in the top section of this chart and the preliminary FFY 2005 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column A	State.
Column B	Inpatient Hospital Services FY 95 DSH Total Computable. This column contains the States' total computable FFY 1995 inpatient hospital DSH expenditures as reported on the Form CMS–64.
Column C	IMD and Mental Health Services FY 95 DSH Total Computable. This column contains the total computable FFY 1995 mental health facility DSH expenditures as reported on the Form CMS–64 as of January 1, 1997.
Column D	Total Inpatient & IMD & Mental Health FY 95 DSH Total Computable, Col. B + C. This column contains the total computation of all inpatient hospital DSH expenditures and mental health facility DSH expenditures for FFY 1995 as reported on the Form CMS–64 as of January 1, 1997 (representing the sum of Column B and Column C).

CHART 6.—PRELIMINARY FFY 2005 IMD DSH LIMITS—Continued

[Key to the Chart of the FFY 2005 IMD Limitations.—The preliminary FFY 2005 IMD DSH Limits for the regular States are presented in the top section of this chart and the preliminary FFY 2005 IMD DSH Limits for the Low-DSH States are presented in the bottom section of the chart.]

Column	Description
Column E	Applicable Percentage Col. C/D. This column contains the ''applicable percentage'' representing the total computable FFY 1995 mental health facility DSH expenditures divided by total computable all inpatient hospital and mental health facility DSH expenditures for FFY 1995 (the amount in Column C divided by the amount in Column D) Per section 1923(h)(2)(A)(ii)(II) of the Act, for FFYs after FY 2002, the applicable percentage can be no greater than 33 percent.
Column F	FY 2005 Federal Share DSH Allotment. This column contains the States' final FFY 2005 DSH allotments.
Column G	FFY 2005 FMAP.
Column H	FY 2005 DSH Allotment Total Computable Col. F/G. This column contains FFY 2005 total computable DSH allotment (determined as Column F/Column G).
Column I	Applicable Percent of FY 2005 DSH Allotment Col. E × H. This column contains the applicable percent of FFY 2004 total computable DSH allotment (calculated as Column E × Column H)
Column J	FY 2005 IMD DSH Limit Total Computable. Lesser of Col. C or I. The column contains the lesser of the lesser of Column I or C.
Column K	FY 2005 IMD DSH Limit Federal Share, Col. G × J. This column contains the total computable IMD DSH Limit from Col. J and converts that amount into a Federal share (calculated as Col. G × Col. J).
Column L	Low DSH Status. This column contains Low DSH status for each State.

BILLING CODE 4120–01–P

ADDENDUM - CHART 1							FINAL DSH ALLOTMENTS FOR FISCAL YEAR:		2003
A	B	C	D	E	F	G	H	I	J
STATE	FY 2003 FMAPS	FY 2002 FEDERAL SHARE DSH ALLOTMENT	FY 2002 DSH ALLOTMENT INCR. BY CPIU 1.015	FY 2003 TC MAP EXP. INCLUDING DSH	FY 2003 TC DSH EXPENDITURES	FY 2003 TC MAP EXP. NET OF DSH	12 PERCENT LIMIT (IN FS)	GREATER OF COL H OR COL C	FY 2003 DSH ALLOTMENTS FEDERAL SHARE (MIN COL I, COL D)
ALABAMA	70.60%	$246,000,000	$249,690,000	$3,477,832,931	$353,668,355	$3,124,164,576	$451,671,029	$451,671,029	**$249,690,000**
ALASKA	58.27%	$9,000,000	$9,135,000	$829,578,423	$15,677,021	$813,901,402	$122,998,145	$122,998,145	**$9,135,000**
ARIZONA	67.25%	$81,000,000	$82,215,000	$4,219,198,403	$172,929,702	$4,046,268,701	$591,011,555	$591,011,555	**$82,215,000**
ARKANSAS	74.28%	$19,059,690	$19,345,585	$2,329,593,600	$31,477,332	$2,298,116,268	$328,909,588	$328,909,588	**$19,345,585**
CALIFORNIA	50.00%	$877,000,000	$890,155,000	$30,097,054,276	$1,835,212,528	$28,261,841,748	$4,462,396,065	$4,462,396,065	**$890,155,000**
COLORADO	50.00%	$74,000,000	$75,110,000	$2,552,159,860	$160,425,595	$2,391,734,265	$377,642,252	$377,642,252	**$75,110,000**
CONNECTICUT	50.00%	$160,000,000	$162,400,000	$3,506,583,946	$228,221,722	$3,278,362,224	$517,636,141	$517,636,141	**$162,400,000**
DELAWARE	50.00%	$4,000,000	$4,060,000	$718,470,271	$2,679,600	$715,790,671	$113,019,580	$113,019,580	**$4,060,000**
DISTRICT OF COLUMBIA	70.00%	$32,000,000	$32,480,000	$1,076,136,978	$37,791,083	$1,038,345,895	$150,381,130	$150,381,130	**$32,480,000**
FLORIDA	58.83%	$160,000,000	$162,400,000	$10,925,528,712	$270,775,092	$10,654,753,620	$1,606,198,989	$1,606,198,989	**$162,400,000**
GEORGIA	59.60%	$215,000,000	$218,225,000	$6,300,856,479	$366,306,092	$5,934,550,387	$891,678,663	$891,678,663	**$218,225,000**
HAWAII	58.77%	$0	$0	$766,109,972	$0	$766,109,972	$115,520,932	$115,520,932	**$0**
IDAHO	70.96%	$7,262,629	$7,371,568	$809,931,820	$10,263,964	$799,667,856	$115,490,701	$115,490,701	**$7,371,568**
ILLINOIS	50.00%	$172,000,000	$174,580,000	$9,253,097,164	$317,136,400	$8,935,960,764	$1,410,941,173	$1,410,941,173	**$174,580,000**
INDIANA	61.97%	$171,000,000	$173,565,000	$4,282,435,701	$242,980,705	$4,039,454,996	$601,140,747	$601,140,747	**$173,565,000**
IOWA	63.50%	$17,399,882	$17,660,880	$2,136,386,901	$26,336,828	$2,110,050,073	$312,205,467	$312,205,467	**$17,660,880**
KANSAS	60.15%	$33,000,000	$33,495,000	$1,764,536,608	$42,126,452	$1,722,410,156	$258,200,550	$258,200,550	**$33,495,000**
KENTUCKY	69.89%	$116,000,000	$117,740,000	$3,697,230,708	$168,464,730	$3,528,765,978	$511,229,133	$511,229,133	**$117,740,000**
LOUISIANA	71.28%	$631,000,000	$640,465,000	$4,423,174,011	$824,062,334	$3,599,111,677	$519,321,215	$631,000,000	**$631,000,000**
MAINE	66.22%	$84,000,000	$85,260,000	$1,776,817,309	$42,854,420	$1,733,962,889	$254,126,940	$254,126,940	**$85,260,000**
MARYLAND	50.00%	$61,000,000	$61,915,000	$4,343,054,613	$58,974,945	$4,284,079,668	$676,433,632	$676,433,632	**$61,915,000**
MASSACHUSETTS	50.00%	$244,000,000	$247,660,000	$7,680,882,159	$410,270,214	$7,270,611,945	$1,147,991,360	$1,147,991,360	**$247,660,000**
MICHIGAN	55.42%	$212,000,000	$215,180,000	$7,967,828,590	$433,271,381	$7,534,557,209	$1,154,026,238	$1,154,026,238	**$215,180,000**
MINNESOTA	50.00%	$33,000,000	$33,495,000	$4,841,448,099	$58,275,222	$4,783,172,878	$755,237,823	$755,237,823	**$33,495,000**
MISSISSIPPI	76.62%	$122,000,000	$123,830,000	$2,853,086,305	$163,634,189	$2,689,452,116	$382,666,334	$382,666,334	**$123,830,000**
MISSOURI	61.23%	$379,000,000	$384,685,000	$5,541,604,705	$525,168,592	$5,016,436,113	$748,705,383	$748,705,383	**$384,685,000**
MONTANA	72.96%	$5,015,146	$5,090,373	$511,474,712	$213,316	$511,261,396	$73,428,408	$73,428,408	**$5,090,373**
NEBRASKA	59.52%	$12,503,085	$12,690,631	$1,325,133,485	-$376,341	$1,325,509,826	$199,228,144	$199,228,144	**$12,690,631**
NEVADA	52.39%	$37,000,000	$37,555,000	$1,015,796,455	$71,683,528	$944,112,927	$146,953,433	$146,953,433	**$37,555,000**
NEW HAMPSHIRE	50.00%	$130,000,000	$131,950,000	$916,422,038	$204,144,639	$712,277,399	$112,464,852	$130,000,000	**$130,000,000**
NEW JERSEY	50.00%	$515,000,000	$522,725,000	$7,858,368,246	$1,113,757,787	$6,744,610,459	$1,064,938,494	$1,064,938,494	**$522,725,000**
NEW MEXICO	74.56%	$9,000,000	$9,135,000	$2,006,492,205	$6,066,342	$2,000,425,863	$286,096,712	$286,096,712	**$9,135,000**
NEW YORK	50.00%	$1,285,000,000	$1,304,275,000	$39,902,769,357	$2,402,065,318	$37,500,704,039	$5,921,163,796	$5,921,163,796	**$1,304,275,000**
NORTH CAROLINA	62.56%	$236,000,000	$239,540,000	$7,050,804,888	$367,935,872	$6,682,869,016	$992,279,159	$992,279,159	**$239,540,000**
NORTH DAKOTA	68.36%	$4,220,379	$4,283,685	$468,522,734	$1,447,281	$467,075,453	$67,982,849	$67,982,849	**$4,283,685**
OHIO	58.83%	$325,000,000	$329,875,000	$10,177,517,569	$238,135,453	$9,939,382,116	$1,498,357,078	$1,498,357,078	**$329,875,000**
OKLAHOMA	70.56%	$16,000,000	$16,240,000	$2,311,939,159	$23,015,873	$2,288,923,286	$330,955,793	$330,955,793	**$16,240,000**
OREGON	60.16%	$20,000,000	$20,300,000	$2,678,357,318	$38,358,799	$2,639,998,519	$395,736,655	$395,736,655	**$20,300,000**
PENNSYLVANIA	54.69%	$449,000,000	$455,735,000	$12,772,008,268	$647,493,932	$12,124,514,336	$1,863,920,419	$1,863,920,419	**$455,735,000**
RHODE ISLAND	55.40%	$52,000,000	$52,780,000	$1,436,618,006	$95,084,365	$1,341,533,641	$205,495,752	$205,495,752	**$52,780,000**
SOUTH CAROLINA	69.81%	$262,000,000	$265,930,000	$3,538,462,013	$346,109,864	$3,192,352,149	$462,601,149	$462,601,149	**$265,930,000**
SOUTH DAKOTA	65.29%	$4,879,888	$4,953,086	$536,195,894	$1,075,100	$535,120,794	$78,674,505	$78,674,505	**$4,953,086**
TENNESSEE	64.59%	$0	$0	$6,357,163,063	$0	$6,357,163,063	$936,929,064	$936,929,064	**$0**
TEXAS	59.99%	$765,000,000	$776,475,000	$15,420,026,696	$1,319,454,870	$14,100,571,826	$2,115,173,921	$2,115,173,921	**$776,475,000**
UTAH	71.24%	$8,667,871	$8,797,889	$1,092,519,199	$12,349,648	$1,080,169,551	$155,877,000	$155,877,000	**$8,797,889**
VERMONT	62.41%	$18,000,000	$18,270,000	$705,028,688	$29,259,141	$675,769,547	$100,396,217	$100,396,217	**$18,270,000**
VIRGINIA	50.53%	$70,086,060	$71,137,351	$3,524,849,814	$155,295,522	$3,369,554,292	$530,278,469	$530,278,469	**$71,137,351**
WASHINGTON	50.00%	$148,000,000	$150,220,000	$4,992,068,397	$279,556,550	$4,712,511,847	$744,080,818	$744,080,818	**$150,220,000**
WEST VIRGINIA	75.04%	$54,000,000	$54,810,000	$1,857,747,927	$77,583,547	$1,780,164,380	$254,283,379	$254,283,379	**$54,810,000**
WISCONSIN	58.43%	$41,767,708	$42,394,224	$4,789,052,234	$44,424,142	$4,744,628,092	$716,507,308	$716,507,308	**$42,394,224**
WYOMING	61.32%	$100,000	$101,500	$337,284,398	$156,152	$337,128,246	$50,298,550	$50,298,550	**$101,500**
TOTAL		**$8,627,962,338**	**$8,757,381,773**	**$261,753,241,307**	**$14,273,275,198**	**$247,479,966,110**	**$37,880,882,689**	**$38,010,096,621**	**$8,745,966,772**

ADDENDUM - CHART 2: FINAL DSH ALLOTMENTS FOR FISCAL YEAR:			2004
A	B	C	D
STATE	FY 2003 FINAL FEDERAL SHARE DSH ALLOTMENT	FY 2004 FS DSH ALLOTMENT = COL B x 1.16	MMA LOW DSH STATUS
ALABAMA	$249,690,000	$289,640,400	N/A
ARIZONA	$82,215,000	$95,369,400	N/A
CALIFORNIA	$890,155,000	$1,032,579,800	N/A
COLORADO	$75,110,000	$87,127,600	N/A
CONNECTICUT	$162,400,000	$188,384,000	N/A
DISTRICT OF COLUMBIA	$32,480,000	$37,676,800	N/A
FLORIDA	$162,400,000	$188,384,000	N/A
GEORGIA	$218,225,000	$253,141,000	N/A
HAWAII	$0	$0	N/A
ILLINOIS	$174,580,000	$202,512,800	N/A
INDIANA	$173,565,000	$201,335,400	N/A
KANSAS	$33,495,000	$38,854,200	N/A
KENTUCKY	$117,740,000	$136,578,400	N/A
LOUISIANA	$631,000,000	$731,960,000	N/A
MAINE	$85,260,000	$98,901,600	N/A
MARYLAND	$61,915,000	$71,821,400	N/A
MASSACHUSETTS	$247,660,000	$287,285,600	N/A
MICHIGAN	$215,180,000	$249,608,800	N/A
MISSISSIPPI	$123,830,000	$143,642,800	N/A
MISSOURI	$384,685,000	$446,234,600	N/A
NEVADA	$37,555,000	$43,563,800	N/A
NEW HAMPSHIRE	$130,000,000	$150,800,000	N/A
NEW JERSEY	$522,725,000	$606,361,000	N/A
NEW YORK	$1,304,275,000	$1,512,959,000	N/A
NORTH CAROLINA	$239,540,000	$277,866,400	N/A
OHIO	$329,875,000	$382,655,000	N/A
PENNSYLVANIA	$455,735,000	$528,652,600	N/A
RHODE ISLAND	$52,780,000	$61,224,800	N/A
SOUTH CAROLINA	$265,930,000	$308,478,800	N/A
TENNESSEE	$0	$0	N/A
TEXAS	$776,475,000	$900,711,000	N/A
VERMONT	$18,270,000	$21,193,200	N/A
VIRGINIA	$71,137,351	$82,519,327	N/A
WASHINGTON	$150,220,000	$174,255,200	N/A
WEST VIRGINIA	$54,810,000	$63,579,600	N/A
TOTAL	$8,530,912,351	$9,895,858,327	

A	C	D	E
LOW DSH STATES	FY 2003 FINAL FEDERAL SHARE DSH ALLOTMENT	FY 2004 FS DSH ALLOTMENT = COL B x 1.16	MMA LOW DSH STATUS
ALASKA	$9,135,000	$10,596,600	LOW DSH
ARKANSAS	$19,345,585	$22,440,879	LOW DSH
DELAWARE	$4,060,000	$4,709,600	LOW DSH
IDAHO	$7,371,568	$8,551,019	LOW DSH
IOWA	$17,660,880	$20,486,621	LOW DSH
MINNESOTA	$33,495,000	$38,854,200	LOW DSH
MONTANA	$5,090,373	$5,904,833	LOW DSH
NEBRASKA	$12,690,631	$14,721,132	LOW DSH
NEW MEXICO	$9,135,000	$10,596,600	LOW DSH
NORTH DAKOTA	$4,283,685	$4,969,075	LOW DSH
OKLAHOMA	$16,240,000	$18,838,400	LOW DSH
OREGON	$20,300,000	$23,548,000	LOW DSH
SOUTH DAKOTA	$4,953,086	$5,745,580	LOW DSH
UTAH	$8,797,889	$10,205,551	LOW DSH
WISCONSIN	$42,394,224	$49,177,300	LOW DSH
WYOMING	$101,500	$117,740	LOW DSH
TOTAL	$215,054,421	$249,463,130	

ADDENDUM - CHART 3: PRELIMINARY DSH ALLOTMENTS FOR FY:		2005	
A	B	C	D
STATE	FINAL FY 2004 DSH ALLOTMENTS FEDERAL SHARE	FY 2005 DSH ALLOTMENTS FEDERAL SHARE	MMA LOW DSH STATUS
ALABAMA	$289,640,400	$289,640,400	N/A
ARIZONA	$95,369,400	$95,369,400	N/A
CALIFORNIA	$1,032,579,800	$1,032,579,800	N/A
COLORADO	$87,127,600	$87,127,600	N/A
CONNECTICUT	$188,384,000	$188,384,000	N/A
DISTRICT OF COLUMBIA	$37,676,800	$37,676,800	N/A
FLORIDA	$188,384,000	$188,384,000	N/A
GEORGIA	$253,141,000	$253,141,000	N/A
HAWAII	$0	$0	N/A
ILLINOIS	$202,512,800	$202,512,800	N/A
INDIANA	$201,335,400	$201,335,400	N/A
KANSAS	$38,854,200	$38,854,200	N/A
KENTUCKY	$136,578,400	$136,578,400	N/A
LOUISIANA	$731,960,000	$731,960,000	N/A
MAINE	$98,901,600	$98,901,600	N/A
MARYLAND	$71,821,400	$71,821,400	N/A
MASSACHUSETTS	$287,285,600	$287,285,600	N/A
MICHIGAN	$249,608,800	$249,608,800	N/A
MISSISSIPPI	$143,642,800	$143,642,800	N/A
MISSOURI	$446,234,600	$446,234,600	N/A
NEVADA	$43,563,800	$43,563,800	N/A
NEW HAMPSHIRE	$150,800,000	$150,800,000	N/A
NEW JERSEY	$606,361,000	$606,361,000	N/A
NEW YORK	$1,512,959,000	$1,512,959,000	N/A
NORTH CAROLINA	$277,866,400	$277,866,400	N/A
OHIO	$382,655,000	$382,655,000	N/A
PENNSYLVANIA	$528,652,600	$528,652,600	N/A
RHODE ISLAND	$61,224,800	$61,224,800	N/A
SOUTH CAROLINA	$308,478,800	$308,478,800	N/A
TENNESSEE	$0	$0	N/A
TEXAS	$900,711,000	$900,711,000	N/A
VERMONT	$21,193,200	$21,193,200	N/A
VIRGINIA	$82,519,327	$82,519,327	N/A
WASHINGTON	$174,255,200	$174,255,200	N/A
WEST VIRGINIA	$63,579,600	$63,579,600	N/A
SUBTOTAL	$9,895,858,327	$9,895,858,327	
LOW DSH STATES			
STATE	PRIOR FY ALLOTMENT (FY 2004)	PRIOR FY ALLOTMENT X FACTOR: 1.16	
ALASKA	$10,596,600	$12,292,056	LOW DSH
ARKANSAS	$22,440,879	$26,031,420	LOW DSH
DELAWARE	$4,709,600	$5,463,136	LOW DSH
IDAHO	$8,551,019	$9,919,182	LOW DSH
IOWA	$20,486,621	$23,764,480	LOW DSH
MINNESOTA	$38,854,200	$45,070,872	LOW DSH
MONTANA	$5,904,833	$6,849,606	LOW DSH
NEBRASKA	$14,721,132	$17,076,513	LOW DSH
NEW MEXICO	$10,596,600	$12,292,056	LOW DSH
NORTH DAKOTA	$4,969,075	$5,764,127	LOW DSH
OKLAHOMA	$18,838,400	$21,852,544	LOW DSH
OREGON	$23,548,000	$27,315,680	LOW DSH
SOUTH DAKOTA	$5,745,580	$6,664,873	LOW DSH
UTAH	$10,205,551	$11,838,439	LOW DSH
WISCONSIN	$49,177,300	$57,045,668	LOW DSH
WYOMING	$117,740	$136,578	LOW DSH
TOTAL LOW DSH STATES	$249,463,130	$289,377,230	
NATIONAL TOTAL	$10,145,321,457	$10,185,235,557	

ADDENDUM - CHART 4

FINAL IMD DSH LIMIT FOR FY: 2003

A	B	C	D	E	F	G	H	I	J	K
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2003 ALLOTMENT IN FS	FY 2003 FMAP	FY 2003 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2003 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2003 IMD DSH LIMIT IN FS Col G x J
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$249,690,000	70.60%	$353,668,555	$3,771,520	$3,771,520	**$2,662,693**
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$9,135,000	58.27%	$15,677,021	$5,173,417	$5,173,417	**$3,014,550**
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$82,215,000	67.25%	$122,252,788	$28,442,744	$28,442,744	**$19,127,746**
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$19,345,585	74.28%	$26,044,137	$6,582,137	$819,351	**$608,614**
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$890,155,000	50.00%	$1,780,310,000	$1,264,020	$1,264,020	**$632,010**
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$75,110,000	50.00%	$150,220,000	$512,033	$512,033	**$256,016**
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$162,400,000	50.00%	$324,800,000	$83,853,213	$83,853,213	**$41,926,606**
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$4,060,000	50.00%	$8,120,000	$2,679,600	$2,679,600	**$1,339,800**
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$32,480,000	70.00%	$46,400,000	$6,590,965	$6,545,136	**$4,581,595**
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$162,400,000	58.83%	$276,049,635	$91,096,379	$91,096,379	**$53,592,000**
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$218,225,000	59.60%	$366,149,329	$0	$0	**$0**
HAWAII	$0	$0	$0	0.00%	$0	58.77%	$0	$0	$0	**$0**
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$7,371,568	70.96%	$10,388,343	$0	$0	**$0**
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$174,580,000	50.00%	$349,160,000	$77,028,329	$77,028,329	**$38,514,165**
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$173,565,000	61.97%	$280,079,071	$92,426,093	$92,426,093	**$57,276,450**
IOWA	$12,011,250	$0	$12,011,250	0.00%	$17,660,880	63.50%	$27,812,409	$0	$0	**$0**
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$33,495,000	60.15%	$55,685,786	$18,376,309	$18,376,309	**$11,053,350**
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$117,740,000	69.89%	$168,464,730	$32,142,176	$32,142,176	**$22,464,167**
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$631,000,000	71.28%	$885,241,302	$97,128,036	$97,128,036	**$69,232,864**
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$85,260,000	66.22%	$128,752,643	$42,488,372	$42,488,372	**$28,135,800**
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$61,915,000	50.00%	$123,830,000	$40,863,900	$40,863,900	**$20,431,950**
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$247,660,000	50.00%	$495,320,000	$90,951,078	$90,951,078	**$45,475,539**
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$215,180,000	55.42%	$388,271,382	$128,129,556	$128,129,556	**$71,009,400**
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$33,495,000	50.00%	$66,990,000	$11,939,459	$5,257,214	**$2,628,607**
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$123,830,000	76.62%	$161,615,766	$0	$0	**$0**
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$384,685,000	61.23%	$628,262,290	$178,553,295	$178,553,295	**$109,328,183**
MONTANA	$237,048	$0	$237,048	0.00%	$5,090,373	72.96%	$6,976,937	$0	$0	**$0**
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$12,690,631	59.52%	$21,321,625	$4,675,375	$1,811,337	**$1,078,108**
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$37,555,000	52.39%	$71,683,527	$0	$0	**$0**
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$130,000,000	50.00%	$260,000,000	$85,800,000	$85,800,000	**$42,900,000**
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$522,725,000	50.00%	$1,045,450,000	$341,475,651	$341,475,651	**$170,737,825**
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$9,135,000	74.56%	$12,251,878	$462,817	$254,786	**$189,968**
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,304,275,000	50.00%	$2,608,550,000	$521,905,069	$521,905,069	**$260,952,534**
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$239,540,000	62.56%	$382,896,419	$126,355,818	$126,355,818	**$79,048,200**
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$4,283,685	68.36%	$6,266,362	$2,067,899	$988,478	**$675,724**
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$329,875,000	58.83%	$560,725,820	$83,269,387	$83,269,387	**$48,987,380**
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$16,240,000	70.56%	$23,015,873	$3,234,275	$3,234,275	**$2,282,104**
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$20,300,000	60.16%	$33,743,351	$11,135,306	$11,135,306	**$6,699,000**
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$455,735,000	54.69%	$833,305,906	$274,990,949	$274,990,949	**$150,392,550**
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$52,780,000	55.40%	$95,270,758	$2,059,886	$2,059,886	**$1,141,177**
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$265,930,000	69.81%	$380,933,964	$62,577,422	$62,577,422	**$43,685,299**
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$4,953,086	65.29%	$7,586,286	$2,503,474	$751,299	**$490,523**
TENNESSEE	$0	$0	$0	0.00%	$0	64.59%	$0	$0	$0	**$0**
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$776,475,000	59.99%	$1,294,340,723	$250,234,633	$250,234,633	**$150,115,756**
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$8,797,889	71.24%	$12,349,648	$2,533,486	$934,586	**$665,799**
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$18,270,000	62.41%	$29,274,155	$9,141,120	$9,071,297	**$5,661,396**
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$71,137,351	50.53%	$140,782,408	$7,979,918	$7,770,268	**$3,926,316**
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$150,220,000	50.00%	$300,440,000	$99,145,200	$99,145,200	**$49,572,600**
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$54,810,000	75.04%	$73,041,045	$16,069,133	$16,069,133	**$12,058,278**
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$42,394,224	58.43%	$72,555,578	$23,943,341	$4,492,011	**$2,624,682**
WYOMING	$0	$0	$0	0.00%	$101,500	61.32%	$165,525	$0	$0	**$0**
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		**$8,745,966,772**		**$15,512,492,973**	**$2,971,552,789**	**$2,931,828,562**	**$1,637,177,324**

ADDENDUM - CHART 5

FINAL IMD DSH LIMIT FOR: 2004

A	B	C	D	E	F	G	H	I	J	K	L
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2004 ALLOTMENT IN FS	FY 2004 FMAP	FY 2004 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2004 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2004 IMD DSH LIMIT IN FS Col G x J	LOW DSH STATUS
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$289,640,400	70.75%	$409,385,724	$4,365,687	$4,365,687	$3,088,724	N/A
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$95,369,400	67.26%	$141,792,150	$32,988,678	$28,474,900	$19,152,218	N/A
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,032,579,800	50.00%	$2,065,159,600	$1,466,263	$1,466,263	$733,132	N/A
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$87,127,600	50.00%	$174,255,200	$593,958	$593,958	$296,979	N/A
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$188,384,000	50.00%	$376,768,000	$97,269,727	$97,269,727	$48,634,863	N/A
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$37,676,800	70.00%	$53,824,000	$7,645,519	$6,545,136	$4,581,595	N/A
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$188,384,000	58.93%	$319,674,190	$105,492,483	$105,492,483	$62,166,720	N/A
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$253,141,000	59.58%	$424,875,797	$0	$0	$0	N/A
HAWAII	$0	$0	$0	0.00%	$0	58.90%	$0	$0	$0	$0	N/A
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$202,512,800	50.00%	$405,025,600	$89,352,862	$89,352,862	$44,676,431	N/A
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$201,335,400	62.32%	$323,067,073	$106,612,134	$106,612,134	$66,440,682	N/A
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$38,854,200	60.82%	$63,883,920	$21,081,694	$21,081,694	$12,821,886	N/A
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$136,578,400	70.09%	$194,861,464	$37,178,533	$37,178,533	$26,058,434	N/A
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	71.63%	$1,021,862,348	$112,117,998	$112,117,998	$80,310,122	N/A
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$98,901,600	66.01%	$149,828,208	$49,443,309	$49,443,309	$32,637,528	N/A
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$71,821,400	50.00%	$143,642,800	$47,402,124	$47,402,124	$23,701,062	N/A
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$287,285,600	50.00%	$574,571,200	$105,503,251	$105,503,251	$52,751,625	N/A
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$249,608,800	55.89%	$446,607,264	$147,380,397	$147,380,397	$82,370,904	N/A
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$143,642,800	77.08%	$186,355,475	$0	$0	$0	N/A
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$446,234,600	61.47%	$725,938,832	$206,313,148	$206,313,148	$126,820,692	N/A
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$43,563,800	54.93%	$79,307,846	$0	$0	$0	N/A
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$150,800,000	50.00%	$301,600,000	$99,528,000	$94,753,948	$47,376,974	N/A
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$606,361,000	50.00%	$1,212,722,000	$396,111,755	$357,370,461	$178,685,231	N/A
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,512,959,000	50.00%	$3,025,918,000	$605,409,880	$605,000,000	$302,500,000	N/A
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$277,866,400	62.85%	$442,110,422	$145,896,439	$145,896,439	$91,695,912	N/A
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$382,655,000	59.23%	$646,049,299	$95,940,167	$93,432,758	$55,340,223	N/A
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$528,652,600	54.76%	$965,399,196	$318,581,735	$318,581,735	$174,455,358	N/A
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$61,224,800	56.03%	$109,271,462	$2,362,600	$2,362,600	$1,323,765	N/A
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$308,478,800	69.86%	$441,567,134	$72,537,856	$72,076,341	$50,352,532	N/A
TENNESSEE	$0	$0	$0	0.00%	$0	64.40%	$0	$0	$0	$0	N/A
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$900,711,000	60.22%	$1,495,700,764	$289,163,529	$289,163,529	$174,134,277	N/A
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$21,193,200	61.34%	$34,550,375	$10,788,667	$9,071,297	$5,564,334	N/A
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$82,519,327	50.00%	$165,038,654	$9,354,826	$7,770,268	$3,885,134	N/A
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$174,255,200	50.00%	$348,510,400	$115,008,432	$115,008,432	$57,504,216	N/A
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$63,579,600	75.19%	$84,558,585	$18,603,009	$18,603,009	$13,987,602	N/A
TOTAL	13,402,460,846	4,118,758,904	17,521,219,750		9,895,858,327		17,553,682,983	3,351,494,658	3,295,684,420	1,844,049,155	
IMD DSH LIMITS FOR LOW DSH STATES											
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$10,596,600	58.39%	$18,147,971	$5,988,830	$5,988,830	$3,496,878	LOW DSH
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$22,440,879	74.67%	$30,053,407	$7,595,401	$819,351	$611,809	LOW DSH
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$4,709,600	50.00%	$9,419,200	$3,108,336	$3,108,336	$1,554,168	LOW DSH
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$8,551,019	70.46%	$12,135,991	$0	$0	$0	LOW DSH
IOWA	$12,011,250	$0	$12,011,250	0.00%	$20,486,621	63.93%	$32,045,395	$0	$0	$0	LOW DSH
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$38,854,200	50.00%	$77,708,400	$13,849,772	$5,257,214	$2,628,607	LOW DSH
MONTANA	$237,048	$0	$237,048	0.00%	$5,904,833	72.85%	$8,105,467	$0	$0	$0	LOW DSH
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$14,721,132	59.89%	$24,580,284	$5,389,929	$1,811,337	$1,084,810	LOW DSH
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$10,596,600	74.85%	$14,157,114	$534,787	$254,786	$190,707	LOW DSH
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$4,969,075	68.31%	$7,274,301	$2,400,519	$988,478	$675,229	LOW DSH
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$18,838,400	70.24%	$26,820,046	$3,768,851	$3,273,248	$2,299,129	LOW DSH
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$23,548,000	60.81%	$38,723,894	$12,778,885	$12,778,885	$7,770,840	LOW DSH
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$5,745,580	65.67%	$8,749,170	$2,887,226	$751,299	$493,378	LOW DSH
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$10,205,551	71.72%	$14,229,714	$2,919,175	$934,586	$670,285	LOW DSH
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$49,177,300	58.41%	$84,193,289	$27,783,785	$4,492,011	$2,623,784	LOW DSH
WYOMING	$0	$0	$0	0.00%	$117,740	59.77%	$196,988	$0	$0	$0	LOW DSH
LOW DSH TOTAL	$98,662,480	$63,238,167	$161,900,647		$249,463,130		$406,540,631	$89,005,497	$40,458,361	$24,099,624	
NATIONAL TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$10,145,321,457		$17,960,223,613	$3,440,500,155	$3,336,142,781	$1,868,148,779	

ADDENDUM - CHART 6

PRELIMINARY IMD DSH LIMIT FOR FY: 2005

A	B	C	D	E	F	G	H	I	J	K	L
STATE	INPATIENT HOSPITAL SERVICES FY 95 DSH TOTAL COMPUTABLE	IMD AND MENTAL HEALTH SERVICES FY 95 DSH TOTAL COMPUTABLE	TOTAL INPATIENT & IMD & MENTAL HEALTH FY 95 DSH TOTAL COMPUTABLE Col B + C	APPLICABLE PERCENT Col C/D	FY 2005 ALLOTMENT IN FS	FY 2005 FMAP	FY 2005 ALLOTMENTS IN TC Col F/G	COL E * COL H IN TC	FY 2005 TC IMD LIMIT (Lesser of Col I or Col C)	FY 2005 IMD DSH LIMIT IN FS Col G x J	MMA LOW DSH STATUS
ALABAMA	$413,006,229	$4,451,770	$417,457,999	1.07%	$289,640,400	70.83%	$408,923,338	$4,360,756	$4,360,756	$3,088,724	N/A
ARIZONA	$93,916,100	$28,474,900	$122,391,000	23.27%	$95,369,400	67.45%	$141,392,735	$32,895,752	$28,474,900	$19,206,320	N/A
CALIFORNIA	$2,189,879,543	$1,555,919	$2,191,435,462	0.071%	$1,032,579,800	50.00%	$2,065,159,600	$1,466,263	$1,466,263	$733,132	N/A
COLORADO	$173,900,441	$594,776	$174,495,217	0.34%	$87,127,600	50.00%	$174,255,200	$593,958	$593,958	$296,979	N/A
CONNECTICUT	$303,359,275	$105,573,725	$408,933,000	25.82%	$188,384,000	50.00%	$376,768,000	$97,269,727	$97,269,727	$48,634,863	N/A
DISTRICT OF COLUMBIA	$39,532,234	$6,545,136	$46,077,370	14.20%	$37,676,800	70.00%	$53,824,000	$7,645,519	$6,545,136	$4,581,595	N/A
FLORIDA	$184,468,014	$149,714,986	$334,183,000	33.00%	$188,384,000	58.90%	$319,837,012	$105,546,214	$105,546,214	$62,166,720	N/A
GEORGIA	$407,343,557	$0	$407,343,557	0.00%	$253,141,000	60.44%	$418,830,245	$0	$0	$0	N/A
HAWAII	$0	$0	$0	0.00%	$0	58.47%	$0	$0	$0	$0	N/A
ILLINOIS	$315,868,508	$89,408,276	$405,276,784	22.06%	$202,512,800	50.00%	$405,025,600	$89,352,862	$89,352,862	$44,676,431	N/A
INDIANA	$79,960,783	$153,566,302	$233,527,085	33.00%	$201,335,400	62.78%	$320,699,904	$105,830,968	$105,830,968	$66,440,682	N/A
KANSAS	$11,587,208	$76,663,508	$88,250,716	33.00%	$38,854,200	61.01%	$63,684,970	$21,016,040	$21,016,040	$12,821,886	N/A
KENTUCKY	$158,804,908	$37,443,073	$196,247,981	19.08%	$136,578,400	69.60%	$196,233,333	$37,440,278	$37,440,278	$26,058,434	N/A
LOUISIANA	$1,078,512,169	$132,917,149	$1,211,429,318	10.97%	$731,960,000	71.04%	$1,030,349,099	$113,049,158	$113,049,158	$80,310,122	N/A
MAINE	$99,957,958	$60,958,342	$160,916,300	33.00%	$98,901,600	64.89%	$152,414,239	$50,296,699	$50,296,699	$32,637,528	N/A
MARYLAND	$22,226,467	$120,873,531	$143,099,998	33.00%	$71,821,400	50.00%	$143,642,800	$47,402,124	$47,402,124	$23,701,062	N/A
MASSACHUSETTS	$469,653,946	$105,635,054	$575,289,000	18.36%	$287,285,600	50.00%	$574,571,200	$105,503,251	$105,503,251	$52,751,625	N/A
MICHIGAN	$133,258,800	$304,765,552	$438,024,352	33.00%	$249,608,800	56.71%	$440,149,533	$145,249,346	$145,249,346	$82,370,904	N/A
MISSISSIPPI	$182,608,033	$0	$182,608,033	0.00%	$143,642,800	77.08%	$186,355,475	$0	$0	$0	N/A
MISSOURI	$521,946,524	$207,234,618	$729,181,142	28.42%	$446,234,600	61.15%	$729,737,694	$207,392,791	$207,234,618	$126,723,969	N/A
NEVADA	$73,560,000	$0	$73,560,000	0.00%	$43,563,800	55.90%	$77,931,664	$0	$0	$0	N/A
NEW HAMPSHIRE	$92,675,916	$94,753,948	$187,429,864	33.00%	$150,800,000	50.00%	$301,600,000	$99,528,000	$94,753,948	$47,376,974	N/A
NEW JERSEY	$736,742,539	$357,370,461	$1,094,113,000	32.66%	$606,361,000	50.00%	$1,212,722,000	$396,111,755	$357,370,461	$178,685,231	N/A
NEW YORK	$2,418,869,368	$605,000,000	$3,023,869,368	20.01%	$1,512,959,000	50.00%	$3,025,918,000	$605,409,880	$605,000,000	$302,500,000	N/A
NORTH CAROLINA	$193,201,966	$236,072,627	$429,274,593	33.00%	$277,866,400	63.63%	$436,690,869	$144,107,987	$144,107,987	$91,695,912	N/A
OHIO	$535,731,956	$93,432,758	$629,164,714	14.85%	$382,655,000	59.68%	$641,177,949	$95,216,758	$93,432,758	$55,760,670	N/A
PENNSYLVANIA	$388,207,319	$579,199,682	$967,407,001	33.00%	$528,652,600	53.84%	$981,895,617	$324,025,553	$324,025,553	$174,455,358	N/A
RHODE ISLAND	$108,503,167	$2,397,833	$110,901,000	2.16%	$61,224,800	55.38%	$110,553,991	$2,390,330	$2,390,330	$1,323,765	N/A
SOUTH CAROLINA	$366,681,364	$72,076,341	$438,757,705	16.43%	$308,478,800	69.89%	$441,377,593	$72,506,720	$72,076,341	$50,374,155	N/A
TENNESSEE	$0	$0	$0	0.00%	$0	64.81%	$0	$0	$0	$0	N/A
TEXAS	$1,220,515,401	$292,513,592	$1,513,028,993	19.33%	$900,711,000	60.87%	$1,479,728,931	$286,075,698	$286,075,698	$174,134,277	N/A
VERMONT	$19,979,252	$9,071,297	$29,050,549	31.23%	$21,193,200	60.11%	$35,257,362	$11,009,430	$9,071,297	$5,452,757	N/A
VIRGINIA	$129,313,480	$7,770,268	$137,083,748	5.67%	$82,519,327	50.00%	$165,038,654	$9,354,826	$7,770,268	$3,885,134	N/A
WASHINGTON	$171,725,815	$163,836,435	$335,562,250	33.00%	$174,255,200	50.00%	$348,510,400	$115,008,432	$115,008,432	$57,504,216	N/A
WEST VIRGINIA	$66,962,606	$18,887,045	$85,849,651	22.00%	$63,579,600	74.65%	$85,170,261	$18,737,578	$18,737,578	$13,987,602	N/A
TOTAL	$13,402,460,846	$4,118,758,904	$17,521,219,750		$9,895,858,327		$17,545,427,267	$3,351,794,654	$3,296,452,951	$1,844,337,027	
LOW DSH STATES											
ALASKA	$2,506,827	$17,611,765	$20,118,592	33.00%	$12,292,056	57.58%	$21,347,787	$7,044,770	$7,044,770	$4,056,378	LOW DSH
ARKANSAS	$2,422,649	$819,351	$3,242,000	25.27%	$26,031,420	74.75%	$34,824,642	$8,801,235	$819,351	$612,465	LOW DSH
DELAWARE	$0	$7,069,000	$7,069,000	33.00%	$5,463,136	50.38%	$10,843,859	$3,578,473	$3,578,473	$1,802,835	LOW DSH
IDAHO	$2,081,429	$0	$2,081,429	0.00%	$9,919,182	70.62%	$14,045,854	$0	$0	$0	LOW DSH
IOWA	$12,011,250	$0	$12,011,250	0.00%	$23,764,480	63.55%	$37,394,933	$0	$0	$0	LOW DSH
MINNESOTA	$24,240,000	$5,257,214	$29,497,214	17.82%	$45,070,872	50.00%	$90,141,744	$16,065,736	$5,257,214	$2,628,607	LOW DSH
MONTANA	$237,048	$0	$237,048	0.00%	$6,849,606	71.90%	$9,526,573	$0	$0	$0	LOW DSH
NEBRASKA	$6,449,102	$1,811,337	$8,260,439	21.93%	$17,076,513	59.64%	$28,632,651	$6,278,526	$1,811,337	$1,080,281	LOW DSH
NEW MEXICO	$6,490,015	$254,786	$6,744,801	3.78%	$12,292,056	74.30%	$16,543,817	$624,945	$254,786	$189,306	LOW DSH
NORTH DAKOTA	$214,523	$988,478	$1,203,001	33.00%	$5,764,127	67.49%	$8,540,713	$2,818,435	$988,478	$667,124	LOW DSH
OKLAHOMA	$20,019,969	$3,273,248	$23,293,217	14.05%	$21,852,544	70.18%	$31,137,851	$4,375,605	$3,273,248	$2,297,165	LOW DSH
OREGON	$11,437,908	$19,975,092	$31,413,000	33.00%	$27,315,680	61.12%	$44,691,885	$14,748,322	$14,748,322	$9,014,174	LOW DSH
SOUTH DAKOTA	$321,120	$751,299	$1,072,419	33.00%	$6,664,873	66.03%	$10,093,704	$3,330,922	$751,299	$496,083	LOW DSH
UTAH	$3,621,116	$934,586	$4,555,702	20.51%	$11,838,439	72.14%	$16,410,367	$3,366,528	$934,586	$674,210	LOW DSH
WISCONSIN	$6,609,524	$4,492,011	$11,101,535	33.00%	$57,045,668	58.32%	$97,814,931	$32,278,927	$4,492,011	$2,619,741	LOW DSH
WYOMING	$0	$0	$0	0.00%	$136,578	57.90%	$235,886	$0	$0	$0	LOW DSH
TOTAL LOW DSH STATES	$98,662,480	$63,238,167	$161,900,647		$289,377,230		$472,227,198	$103,312,425	$43,953,875	$26,138,369	
TOTAL	$13,501,123,326	$4,181,997,071	$17,683,120,397		$10,185,235,557		$18,017,654,465	$3,455,107,079	$3,340,406,826	$1,870,475,396	

BILLING CODE 4120–01–C

Authority: Section 1923(a)(2), (f), and (h) of the Social Security Act (42 U.S.C. 1396r–4(a)(2), (f), and (h), and Pub. L. 105–33).

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

Dated: May 6, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 20, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–16997 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1309–NC]

Medicare and Medicaid Programs; Announcement of an Application From a Hospital Requesting Waiver for Organ Procurement Service Area

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

ACTION: Notice with comment period.

SUMMARY: This notice announces a hospital's request for a waiver from entering into an agreement with its designated organ procurement organization (OPO), in accordance with section 1138(a)(2) of the Social Security Act. This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1309–NC. 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/regulations/ecomments.* (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–1309–NC, P.O. Box 8015, Baltimore, MD 21244–8015.

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–1309–NC, 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: Mark A. Horney, (410) 786–4554.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* We welcome comments from the public on all issues set forth in this notice with comment period to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1309–NC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

Organ Procurement Organizations (OPOs) are not-for-profit organizations that recover human organs from potential donors in hospitals and distribute them to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover organs in CMS-defined exclusive geographic service areas, according to section 371(b)(1)(F) of the Public Health Service Act (42 U.S.C. 273(b)(1)(F)) and our regulations at 42 CFR 486.307. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, according to section 1138(a) of the Social Security Act (the Act), and our regulations at 42 CFR 482.45. Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver: (1) Is expected to increase organ donations; and (2) will ensure equitable treatment

of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at 42 CFR 486.316(e) and (f).

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

III. Hospital Waiver Request

As permitted by 42 CFR 486.316(e), Rockford Health System of Rockford, Illinois has requested a waiver in order to enter into an agreement with an alternative, out-of-area OPO. Rockford Health System is requesting a waiver to work with: University of Wisconsin OPO, University of Wisconsin Hospital and Clinic, 600 Highland Avenue, Madison, Wisconsin 53792. Rockford Health System's designated OPO is: Gift of Hope Organ and Tissue Donor Network, 660 North Industrial Drive, Elmhurst, Il 60126–1520. Rockford Health System must continue to work with its designated OPO until the completion of our review.

Authority: Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare-Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–16796 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4106–PN]

Medicare Program; Changes in Medicare Advantage Deeming Authority

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

ACTION: Proposed notice.

SUMMARY: This proposed notice announces that on September 26, 2005, we will begin to accept revisions from private accrediting organizations (AOs) who seek to modify their deeming authority.

EFFECTIVE DATE: This proposed notice is effective on September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Shaheen Halim, 410–786–0641.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1987, added section 1852(e)(4) to the Social Security Act (the Act), which gives us the authority to determine that a Medicare Advantage (MA) organization is deemed to be in compliance with certain Medicare requirements if the MA organization has been accredited (and is periodically reaccredited) by an accrediting organization that we have determined applies and enforces requirements at least as stringent as those the MA organization would be deemed to meet. Section 518 of the Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999, amended section 1852(e)(4) of the Act to expand the scope of deeming from two to six areas. Accrediting organizations may seek authority for any of the categories. The BBRA specified that we cannot require an accrediting entity to be able to certify plans for all the deeming categories. It also required us to determine, within 210 days from the day the application is determined to be complete, the eligibility of the accrediting organizations to be granted deeming authority. Conditions and procedures for granting deeming authority to accrediting organizations are outlined in § 422.157 and § 422.158 of title 42 of the Code of Federal Regulations.

Since the start of the Medicare Deeming program, we have approved three organizations to be AOs. These consist of the National Committee for Quality Assurance, the Joint Commission on the Accreditation of Healthcare Organizations, and Accreditation Association for Ambulatory Health Care (AAAHC).

Section 722 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) revised section 1852(e)(4) of the Act. When we published the final rule of the Medicare Advantage program on January 28, 2005 (70 FR 4588), we made further changes to several sections of the rules that apply to the AOs. These changes consisted of the addition of the Chronic Care Improvement Program requirements (§ 422.152), and the deletion of some requirements in the areas of access and quality improvement projects. (§ 422.112 and § 422.152). Furthermore, it added prescription drug program requirements to the deemable areas. These areas include:

- Access to covered drugs, as provided under § 423.120 and § 423.124.
- Drug utilization management programs, quality assurance measures and systems, and Medication Therapy Management Programs as provided under § 423.153.
- Privacy, confidentiality, and accuracy of enrollee records, as provided under § 423.136.
- A program to protect against fraud, waste and abuse, as described in § 423.504(b)(4)(vi)(H).

II. Provisions of the Proposed Notice

This proposed notice announces that 30 days after publication, we will begin to accept applications from national private AOs who seek to modify their deeming authority. The application will consist of a letter stating how the applicant will modify their

accreditation program to address the changes to the Medicare Advantage rule. At this time, we will not be adding the prescription drug program requirements to the deemable areas. Those requirements will be added at a later time. The letters should be sent to Shaheen Halim, Centers for Medicare & Medicaid Services, Mailstop C4–23–07, 7500 Security Blvd, Baltimore, MD 21244.

Authority: Section 1852(e)(4) of the Social Security Act

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program (42 U.S.C. 1395w–22(e)(4)).

Dated: July 6, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–16799 Filed 8–25–05; 8:45 am]

BILLING CODE 4121–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1330–N]

Medicare Program; Town Hall Meeting on the Medicare Provider Feedback Group (MPFG)—September 12, 2005

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting on the Medicare Provider Feedback Group (MPFG). The purpose of the meeting is to solicit facts and opinions from individual Medicare providers and suppliers on a variety of Medicare policy and operational issues. All Medicare providers and suppliers that participate in the Medicare program, including physicians, hospitals, home health agencies, and other third-party billers, are invited to attend this meeting. We will consider facts and opinions obtained from individual Medicare providers and suppliers. The meeting is open to the public, but attendance is limited to space available.

DATES: *Meeting Date:* The Town Hall meeting announced in this notice will be held on September 12, 2005 from 2 p.m. to 4 p.m. EST.

ADDRESSES: The Town Hall meeting will be held in the Auditorium in the central building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Eva Tetteyfio, (410) 786–3136. You may also send e-mail inquiries about this meeting to *MFG@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2004, we held the first Medicare Provider Feedback Town Hall meeting to solicit the facts and opinions of individual Medicare providers and suppliers. Topics discussed during the November 16, 2004 meeting included Medicare Fee-for-Service (FFS) Chronic Care Improvement Programs, CMS electronic medical records, CMS Provider Outreach, and consolidated billing. After the meeting, we conducted follow-up meetings to clarify information received and solicited additional comments.

At the September 12, 2005 meeting, we will explain our design for gathering individual provider and supplier information and present topics for provider and supplier input. We will also solicit facts and opinions on how we can better serve the Medicare provider and supplier community.

II. Meeting Format

This meeting will begin with an overview of the goals and objectives of the meeting that includes a discussion of our efforts to gather feedback from individual Medicare providers and suppliers. We will introduce the meeting moderator. We will also introduce members of the Provider Communications Group, Center for Medicare Management, who will provide background information on the Medicare Provider Feedback Group initiative. Topics to be discussed during the meeting include:

- The important information for individual providers and suppliers on our implementation of the National Provider Identifier (NPI).
- The elimination of the Standard Paper Remittance (SPR) advice notices and their effect on individual provider and supplier practices.
- The impact of the implementation and procurement of Medicare Contracting Reform on individual providers and suppliers.
- A discussion and summary of the proposed rule for the 2006 physician fee-schedule.
- The effect of a revised payment system for Ambulatory Surgical Center (ASC) facility services.
- Individual perspectives from hospitals on how Medicare pays for new technologies.

We will hold a question and answer session that offers meeting attendees an opportunity to provide feedback on the topics discussed. We will also solicit suggestions on how this process can be improved.

III. Registration Instructions

The Provider Communications Group, Center for Medicare Management, Division of Provider Relations and Evaluations is the coordinator for this meeting. *On-line Registration:* An on-line registration tool is available for interested individuals who wish to participate in the meeting in person, by teleconference, or listen to a digital recording of the meeting. 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 begin on August 19, 2005. Persons interested in attending the meeting and providing feedback must complete the on-line registration located at *http://registration.mshow.com/cms2/*. The on-line registration system will generate a confirmation page to indicate the completion of your registration. Interested parties, who will attend the meeting in person, must print the confirmation page and bring it with them to the meeting. We encourage all interested parties to complete the registration as soon as possible. Registration after 12 p.m. on September 9, 2005 will delay confirmation, and individuals may not be permitted entrance to the building. However, registrations received after September 12 will enable individuals to listen to a digital recording of the meeting that will be available beginning 2 hours after the meeting through midnight on September 14, 2005. The online registration will close on September 16, 2005.

Teleconference Participation: Individuals may participate in the public meeting by teleconference. The dial-in number is 877–357–7851 and the conference identification number is 7970566. Physicians and other interested parties may speak or ask questions during the question and answer period facilitated by the moderator. Parties may also submit written comments to Eva Tetteyfio at *MFG@cms.hhs.gov*.

IV. Security Information

Since this meeting will be held in a Federal government building, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants

must bring a government-issued photo identification and a copy of their confirmation of registration for the meeting. Access may be denied to persons without proper identification.

Security measures also 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, whether personal, for the purpose of demonstration, or to support a presentation are subject to inspection. Laptops and other computer equipment must be registered with the security desk upon entry. We cannot assume responsibility for coordination of the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for a demonstration or to support a presentation. Participants should e-mail presentations to us before the meeting to ensure that we have a back-up copy in the event of computer problems or lack of software or memory card compatibility. Please note that CMS headquarters is a smoke-free facility.

Special Accommodations: Individuals requiring sign language interpretation or other special accommodations must contact Eva Tetteyfio by e-mail at *MFG@cms.hhs.gov* by September 6, 2005.

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: August 9, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–16797 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4111–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education, September 27, 2005

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

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on September 27, 2005. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for September 27, 2005 from 9 a.m. to 3:30 p.m., e.d.t.

Deadline for Presentations and Comments: September 20, 2005, 12 noon, e.d.t.

ADDRESSES: The meeting will be held at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001, (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *Lynne.Johnson@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of Health and Human Services (the Secretary) the authority to establish an advisory panel for the purpose of advising the Secretary in connection with any of his functions. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 14, 2005. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Drew E. Altman, President and Chief Executive Officer, Henry J. Kaiser Family Foundation; Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; The Honorable Bobby Jindal, United States Congress; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Dr. David Lansky, Director, Health Program, Markle Foundation; Donald J. Lott, Executive Director, Indian Family Health Clinic; Dr. Frank I. Luntz, President and Chief Executive Officer, Luntz Research Companies; Dr. Daniel Lyons, Senior Vice President, Government Programs, Independence Blue Cross; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Keith Mueller, Professor and Section Head, Health Services Research and Rural Health Policy, University of Nebraska; Lee Partridge, Senior Health Policy Advisor, National Partnership for Women and Families; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Susan O. Raetzman, Associate Director, Public Policy Institute, AARP; Rebecca Snead, Administrative Manager, National Council of State Pharmacy Association Executives; Catherine Valenti, Chairperson and Chief Executive Officer, Caring Voice Coalition, and Grant Wedner.

The agenda for the September 27, 2005 meeting will include the following:

- Recap of the previous (June 21, 2005) meeting.
- Centers for Medicare & Medicaid Services update.
- Medicare Modernization Act: outreach and education strategies.
- Public comment.
- Listening session with CMS leadership.
- Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written

copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by email at *Lynne.Johnson@cms.hhs.gov,* no later than 12 noon, e.d.t., September 20, 2005. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, (e.d.t.), September 20, 2005. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 19, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–16800 Filed 8–25–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Temporary Assistance for Needy Families (TANF) State Plan Guidance.

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

Respondents: The 50 States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Temporary Assistance for Needy Families (TANF) State Plan Guidance	54	0.5	33	891

Estimated Total Annual Burden Hours: 891

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: August 23, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–17008 Filed 8–25–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0149]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 16 new animal drug applications (NADAs) and 1 abbreviated NADA (ANADA) because the products are no longer manufactured or marketed. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove portions reflecting approval of the NADAs.

DATES: Withdrawal of approval is effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–7818, or e-mail: *pesposit@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the 16 NADAs and 1 ANADA listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA Number, Product (Drug)	21 CFR Section Affected, (Sponsor Drug Labeler Code)
Abbott Laboratories, North Chicago, IL 60064	NADA 99–568, FURANACE Caps (nifurpirinol)	529.1526 (000074)
Biocraft Laboratories, Inc., 92 Route 46, Elmwood Park, NJ 07407	NADA 140–889, DERM–OTIC Ointment (neomycin sulfate, nystatin, thiostrepton, triamcinolone acetonide)	524.1600a (000332)
First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123	NADA 48–646, THERAZONE Injection (phenylbutazone)	522.1720 (058829)
Happy Jack, Inc., Snow Hill, NC 28580	NADA 121–556, Selenium Sulfide Suspension (selenium disulfide) NADA 121–723, Nitrofurazone Dressing NADA 125–137, FILARICIDE Capsules (diethylcarbamazine citrate)	524.2101 (023851) 524.1580b (023851) 520.622d (023851)
IMPAX Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544	NADA 92–151, N-Butyl Chloride Canine Worming Caps NADA 65–065, Tetracycline HCl Caps NADA 138–900, Dichlorophene/Toluene	520.260 (000115) 520.2345a (000115) 520.580 (000115)
Jorgensen Laboratories, Inc., 1450 North Van Buren Ave., Loveland, CO 80538	NADA 10–481, SUREJETS (salacylic acid)	529.2090 (048087)
Pliva d.d., Ulica grada Vukovara 49, 10000 Zagreb, Croatia	ANADA, 200–232, GEOMYCIN 200 Injection (oxytetracycline)	522.1660a (011722)
Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166-6812	NADA 65–113 AUREO Sulfa Soluble Powder (chlortetracycline/sulfamethazine)	N/A (017800)
Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298	NADA 140–848, VETEEZE Injection (diazepam)	522.575 (063238)
Teva Pharmaceuticals USA, 650 Cathill Rd., Sellersville, PA 18960	NADA 131–806, Furosemide Tablets	520.1010 (000093)
Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137	NADA 10–886, Purina Liquid Wormer (piperazine citrate)	N/A (051311)
Wyeth Laboratories, Division of American Home Products Corp., P.O. Box 8299, Philadelphia, PA 19101	NADA 10–782, SPARINE Injection (promazine) NADA 55–008, BICILLIN Fortified (penicillin G benzathine and penicillin G procaine)	522.1962 (000008) 522.1696a (000008)

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 10–481, 10–782, 10–886, 48–646, 55–008, 65–065, 65–113, 99–568, 121–556, 121–723, 125–137, 131–806, 138–900, 140–848, 140–889, and ANADA 200–232, and all supplements and amendments thereto, is hereby withdrawn, effective September 6, 2005.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: July 5, 2005.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 05–16994 Filed 8–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the National Commission on Digestive Diseases (Commission).

This Commission shall conduct an overview of the state-of-the-science in the field of digestive diseases research and develop a long-range plan for digestive diseases research consistent with the research mission of NIH. The overall plan will focus on the goal of improving the health of the nation through digestive diseases research and will include specific objectives and goals and a recommended time line for their implementation. Recommendations shall be made to the Director, NIH and to Congress.

The Commission shall be composed of 16 members appointed by the Director, NIH and 18 nonvoting ex officio members. Of the appointed members, who shall have a broad diversity of scientific and professional experience, 12 shall be knowledgeable about digestive diseases as members of academic or medical research and practice communities involved in digestive diseases research, including

individuals in allied health specialties relevant to digestive diseases research. Four members shall be appointed who have close personal or family experience with digestive diseases or experience with patient-oriented organizations in digestive diseases.

Unless renewed by appropriate action prior to its expiration, the Charter for the National Commission on Digestive Diseases will expire two years from the date of establishment.

Dated: August 16, 2005.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–17012 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Advisory Committee to the Director, NIH.

Date: September 6, 2005.

Time: 11 a.m. to 12 p.m.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 5B64, Bethesda, MD 20892.

Agenda: To review and evaluate grant applications (Telephone Conference Call).

Contact Person: Shelly Pollard, ACD Coordinator, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5B64, Bethesda, MD 20892, 301–496–0959.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: August 19, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17016 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: September 20, 2005, 8 a.m. to 4:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: September 20, 2005, 4:15 p.m. to Adjournment.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: September 21, 2005, 8 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: August 18, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17011 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial properly such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Basic Science.

Date: October 17–18, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale L. Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Dated: August 18, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17017 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Pediatrics Subcommittee.

Date: October 18–19, 2005.

Time: October 18, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday In Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 10892, (301) 496–1487, *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: August 18, 2005.

Anthony M. Coelho, Jr.

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17010 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: September 18–20, 2005.

Closed: September 18, 2005, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Open: September 19, 2005, 8:30 a.m. to 11:10 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 19, 2005, 11:10 a.m. to 1:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: September 19, 2005, 1:10 p.m. to 4:30 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 19, 2005, 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 19, 2005, 6:30 p.m. to 9:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: September 20, 2005, 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Story C. Landis, PhD, Director, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Building 31, Room 8A52, Bethesda, MD 20892, 301–496–9746, *landiss@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: August 18, 2005.

Anthony M. Coehlo,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17013 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Review of Research Program Projects (P01s).

Date: September 27, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites Hotel, 300 Meredith Drive, Research Triangle Park, NC 27713.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 17, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17014 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Review of an Unsolicited Revised Tyrosine Phosphatase Program Project Application

Date: September 20, 2005.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3118, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550 *qvos@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–17018 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., 4314(c)(4), which requires that members of performance review board be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members: Ms. Colleen Barros (Chair), Dr. Norka Ruiz Bravo, Dr. Michael Gottesman, Ms. Lynn Hellinger, Dr. Barry Hoffer, Dr. Sharon Hrynkow, Dr. Betsy Humphreys, Dr. Raynard Kington, Dr. Lore Anne McNicol, Dr. Marcelle Morrison-Bogorad, Ms. Martha Pine, and Dr. Brent Stanfield.

For further information about the NIH Performance Review Board, contact the Office of Human Resources, Workforce Relations Division, National Institutes of Health, Building 31/B3C07, Bethesda, Maryland 20892, telephone (301) 402–9203 (not a toll-free number).

Dated: August 16, 2005.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–17019 Filed 8–25–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Drug and Alcohol Services Information System (DASIS) (OMB No. 0930–0106)—Revision

The DASIS consists of three related data systems: The Inventory of Substance Abuse Treatment Services (I–SATS); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment. In addition, SAMHSA and the State substance abuse officials participating in SAMHSA's December 2004 meeting on National Outcome Measures (NOMS) agreed that several NOMS data elements to assess the performance of the Substance Abuse

Prevention and Treatment (SAPT) Block Grant will be collected in TEDS.

The request for OMB approval includes a request to conduct the 2006 N–SSATS survey and the 2006 Mini-N–SSATS. The Mini-N–SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The 2006 N–SSATS questionnaire will include several new items, including the addition of nicotine replacement therapy and psychiatric medications to the pharmacotherapies list and the addition of new services to the list of services provided. The request also includes a request to conduct a pretest of the 2007 N–SSATS questionnaire in 2006. The 2007 pretest questionnaire will include several changes, including the modification of the treatment categories to better reflect the practices and terminology currently used in the treatment field; modification of the detoxification question, including the addition of a follow-up question on whether the facility uses drugs in detoxification and for which substances; the addition of questions on treatment approaches and behavioral interventions; the addition of a question on quality control procedures used by the facility; and, the addition of a question on whether the facility accepts ATR vouchers and how many annual admissions were funded by ATR vouchers. Following the pretest of the 2007 N–SSATS, a separate request for OMB approval will be submitted for the 2007 and 2008 N–SSATS, including the Mini-N–SSATS for those years.

The request for OMB approval will also include the addition of several new NOMS data elements to the TEDS client-level record. To the extent that states already collect the elements from their treatment providers, the following elements will be included in the TEDS data collection: Number of arrests at admission and at discharge; substances used/frequency of use at discharge; employment at discharge; and living arrangement at discharge.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States:				
TEDS Admission Data	52	4	6	1,248
TEDS Discharge Data	40	4	8	1,280
TEDS Discharge Crosswalks	5	1	10	50
I–SATS Update	56	67	.08	300
State subtotal	56			2,878
Facilities:.				
I–SATS Update	100	1	.08	8
Pretest of N–SSATS revisions	200	1	.17	34
N–SSATS questionnaire	17,000	1	.2	3,400
Augmentation screener	1,000	1	.08	80
Mini-N–SSATS	700	1	.13	91
Facility subtotal	19,000			3,613
Total	19,056			6,491

Written comments and recommendations concerning the proposed information collection should be sent by September 26, 2005 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 12, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–16989 Filed 8–25–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice: Request for Comments; National Registry of Evidence-Based Programs and Practices (NREPP)

Authority: Sec. 501, Pub. L. 106–310

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) is committed to preventing the onset and reducing the progression of mental illness, substance abuse and substance related problems among all individuals, including youth. As part of this effort, SAMHSA is expanding and refining the agency's National Registry of Evidence-based Programs and Practices (NREPP) so that the system serves as a leading national resource for contemporary and reliable information on the scientific basis and practicality of interventions to prevent and/or treat mental illness and substance use and abuse.

NREPP represents a major agency activity within SAMHSA's Science to Service initiative. The initiative seeks to accelerate the translation of research into practice by promoting the implementation of effective, evidence-based interventions for preventing and/or treating mental disorders and substance use and abuse. Of equal measure, the initiative emphasizes the essential role of the services community in providing input and feedback to influence and better frame the research questions and activities pursued by researchers in these areas.

Through SAMHSA's Science to Service initiative, the agency ultimately seeks to develop a range of tools that will facilitate evidence-based decision-making in substance abuse prevention, mental health promotion, and the treatment of mental and substance use disorders. In addition to NREPP, SAMHSA is developing an informational guide of web-based

resources on evidence-based interventions that will be available in 2006. SAMHSA also is exploring the feasibility of supporting a searchable web database of evidence-based information (e.g., systematic reviews, meta-analyses, clinical guidelines) for mental health and substance abuse prevention and treatment providers. Such a system could reduce the lag time between the initial development and broader application of research knowledge by serving as a real-time resource to providers for ''keeping current'' in ways that will enhance their delivery of high quality, effective services. In combination, these three tools—NREPP, guide to web-based resources, and database of evidence-based information—would provide valuable information that can be used in a variety of ways by a range of interested stakeholders.

With regard to NREPP, during the past two years, SAMHSA convened a series of scientific/stakeholder panels to inform the agency's expansion of the system to include interventions in all substance abuse and mental health treatment and prevention domains. These panels thoroughly assessed the existing NREPP review process and review criteria and provided comments and suggestions for refining and enhancing NREPP. As part of this expansion effort, SAMHSA also engaged a contractor to assess the NREPP process and review criteria, including how the system and criteria compare to other, similar evidence review and rating systems in the behavioral and social sciences. The cumulative results of these activities have guided efforts to refine the NREPP review process and review criteria, as well as inform the agency's plans for how such a system may be used to promote greater adoption of evidence-based interventions within typical community-based settings.

This **Federal Register** Notice (FRN) provides an opportunity for interested parties to become familiar with and comment on SAMHSA's plans for expansion and use of NREPP.

DATES: Submit comments on or before October 25, 2005.

ADDRESSES: Address all comments concerning this notice to: SAMHSA c/o NREPP Notice, 1 Choke Cherry Road, Rockville, MD 20857. See **SUPPLEMENTARY INFORMATION** for information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kevin D. Hennessy, PhD, Science to Service Coordinator/SAMHSA, 1 Choke Cherry Road, Room 8–1017, Rockville, Maryland 20857. Dr. Hennessy may be reached at (240) 276–2234.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Addresses

You may submit comments by sending electronic mail (e-mail) to *nrepp.comments@samhsa.hhs.gov.*

Dated: August 18, 2005.

Charles G. Curie,

Administrator.

Overview

Increasingly, individuals and organizations responsible for purchasing, providing and receiving services to prevent substance abuse and/or treat mental and substance use disorders are considering the extent to which these services are ''evidence-based''—that there exists some degree of documented scientific support for the outcomes obtained by these services. As the Federal agency responsible for promoting the delivery of substance abuse and mental health services, SAMHSA is particularly interested in supporting and advancing activities that encourage greater adoption of effective, evidence-based interventions to prevent and/or treat mental and substance use disorders. With this in mind, SAMHSA proposes to refine and expand its National Registry of Evidence-based Programs and Practices (NREPP). SAMHSA believes that the growth and evolution of NREPP can serve as an important mechanism for promoting greater adoption of evidence-based substance abuse and mental health services,—one that can do so in conjunction with an ever-growing array of scientific knowledge, clinical expertise and judgment, and patient/recipient values and perspectives. By clearly identifying and assessing the scientific basis and disseminability of a range of behavioral interventions, NREPP is likely to prove an important resource to both individuals and systems seeking information on the effectiveness of various services to prevent and/or treat mental and substance use disorders.

Background and Need

As SAMHSA promotes the identification and greater use of effective, evidence-based interventions for individual-, population-, policy-, and system-level changes, the agency seeks to build upon the strong foundation provided by the precursor to the National Registry of Evidence-based Programs and Practices—namely, the National Registry of Effective Prevention Programs. The previous system provides an important building block in the agency's efforts to develop a SAMHSA-wide registry.

The National Registry of Effective Prevention Programs developed in SAMHSA's Center for Substance Abuse Prevention (CSAP) beginning in 1997 as a way to help professionals in the field become better consumers of prevention programs. Between 1997 and 2004, NREPP reviewed and rated more than 1,100 prevention programs, with more than 150 obtaining designation as a Model, Effective, or Promising Program.

Information on all current NREPP programs is available through the Model Programs Web site at *http://www.modelprograms.samhsa.gov.* Additional details about the review process, review criteria, and rating system for the National Registry of Effective Prevention Programs are available in the SAMHSA publication ''Science-Based Prevention programs and Principles 2002,'' which can be downloaded from SAMHSA's Model Programs Web site *http://www.modelprograms.samhsa.gov*) by clicking on ''Publications'' on the tool bar on the left side of the page; or by requesting the publication through SAMHSA's National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686 (or by visiting the NCADI Web site at *http://www.health.org*).

As SAMHSA expands the NREPP system, one area of potential improvement is in the efficient screening and triage of applications. Given the historical applications trends among substance abuse prevention programs, combined with the increased demands on the system through expansion to other SAMHSA domains, it is essential that the agency develop a transparent and scientifically defensible process for screening and triaging applications.

Moreover, as SAMHSA engaged NREPP scientific/stakeholder panels over the past 2 years, concerns about the existing review process and review criteria emerged. In particular, a range of scientific experts voiced concerns regarding specific review criteria and other elements of the review process.

In addition, systematic efforts to examine and compare the current NREPP review criteria with other evidence-grading systems in the social and behavioral sciences has revealed both areas of relative strength and relative weakness. At a minimum, this comparison has affirmed for SAMHSA the importance and value of reexamining and refining the NREPP review process and review criteria in ways that reflect to the public SAMHSA's commitment to identifying

and promoting interventions that have shown to be effective through prevailing scientific standards. One important element of this process is providing support for the re-review of existing NREPP programs against these prevailing scientific standards (see below), while another component is identifying both SAMHSA and other mechanisms and resources for supporting efforts to evaluate and document the evidence-base of innovative interventions in ways that will maximize their opportunity for entry into NREPP.

Further, SAMHSA's experience with NREPP to date suggests that the system is limited in its ability to identify and rate interventions designed to promote population-, policy-, and system-level outcomes, such as those promoted by community prevention coalitions. SAMHSA's plans for NREPP include an expansion of the system in this area. As part of this expansion, SAMHSA proposes a second set of review criteria for these interventions, with the recognition that some interventions may be designed to affect a community over time, and that the prevailing scientific standards for assessing the effectiveness of these interventions may indeed be different than those for interventions seeking to change individual-level outcomes. Finally, input into the NREPP process to date suggests the need for SAMHSA to provide greater policy guidance on how best to use the system to appropriately select specific interventions, as well as contextual guidance on how NREPP might be used in conjunction with other important information—such as clinical expertise, patient values, and administrative and policy perspectives and data—in making decisions regarding the financing and delivery of substance abuse and mental health services.

Proposal

After extensive consultation with both scientific experts and a range of stakeholders. SAMHSA is seeking your comments on a proposal to advance a voluntary rating and classification system for mental health and substance abuse prevention and treatment interventions—a system designed to categorize and disseminate information about programs and practices that meet established evidentiary criteria. This proposal presents in detail the new NREPP system, including refinements to the review process and review criteria for programs and practices in substance abuse and mental health, as well as an expansion of the system to include successful community coalition efforts to achieve population-, policy-, or system-level outcomes. The proposal also describes SAMHSA's plans for a new Web site that will highlight the scientific evidence-base of interventions, as well as provide a range of practical information needed by those who are considering implementation of programs or practices on the Registry.

SAMHSA further anticipates that additional revisions and refinements to the NREPP system may be needed on a periodic basis, and proposes the formation of an external advisory panel to regularly assist the agency in assessing proposed suggestions for improvements to the system (see Question # 10 below).

Initial Input From the Field

Upon determining that SAMHSA would expand NREPP to include interventions in all agency domains, three expert panel meetings of both scientist and nonscientist stakeholders were convened to provide feedback on the current review system and review criteria, as well as solicit suggestions about redesigning the system to promote the goals noted above. Each meeting was conducted over a 2-day period, and included invited participants representing a range of relevant organizations, expertise, and perspectives. All meetings took place in Washington, DC, in 2003, with mental health experts meeting in April, substance abuse prevention and mental health promotion experts meeting in September, and substance abuse treatment experts meeting in December. Transcripts of these meetings are available on-line at the NREPP Web page accessible through the ''Quick Picks'' section on SAMHSA's Home page *(http://www.samhsa.gov)*.

SAMHSA also convened a meeting in May 2005 to solicit recommendations for integrating evidence-based findings from community coalitions into NREPP. The 2-day meeting brought together prominent researchers and practitioners who reaffirmed the importance of including prevention coalitions within NREPP, and offered suggestions as to the types of outcomes and evidence criteria appropriate to the assessment of community coalitions. A summary of this meeting is available on-line at the NREPP web page accessible through the ''Quick Picks'' section on SAMHSA's Home page *(http://www.samhsa.gov)*.

Review Process for Determining Individual-Level Outcome Ratings for Interventions

A primary goal of the Registry is to provide the public with reliable information about the evidence quality and strength of scientific support for specific interventions. The strength of scientific support includes: the quality of evaluation design (*e.g.*, experimental or quasi-experimental designs); fidelity to predetermined intervention components; confidence in the link between intervention components and specific outcome(s) achieved; freedom from internal and external sources of bias and error; and the statistical significance and practical magnitude (*e.g.,* effect size) of outcomes achieved.

An additional goal is to provide key information about the transferability of these programs and practices to real-world prevention and treatment settings. NREPP utility descriptors provide information about the appropriate settings and populations for implementation of specific interventions, the availability of training and dissemination materials, and their practicality and costs.

This section describes the NREPP review process, including the evidence rating criteria and utility descriptors that will form the basis for Web-based information about programs and practices.

Based on important feedback from scientists and practitioners in the prevention and treatment fields, the NREPP review process has been enhanced in several important respects:

—Programs and practices will be rated on the strength of evidence for specific outcomes achieved, rather than on global assessments of the effectiveness of intervention(s). In addition, indicators of strength of association or magnitude of outcome effects, such as effect size statistics, will be utilized in NREPP to complement traditional, statistical significance (null-hypothesis) testing.

—There will be multiple, outcome-specific ratings of evidence quality strength. All programs and/or practices listed on the Registry will be considered ''Effective'' for demonstrating specific outcomes having varying levels of evidence quality and confidence resulting from independent (or applicant) replication(s).

—Evidence rating criteria have been refined and now emphasize intervention impacts, evaluation design and fidelity, quality of comparison conditions, and replications.

The section below is an overview of the NREPP process for obtaining expert reviewers' ratings of the evidence quality for outcome-specific program and practice interventions. The process includes an internal screening and triage process conducted by qualified

NREPP contractor staff serving as review coordinators, as well as an independent, external scientific review process conducted by qualified and trained external scientists—working independently of one another—to assess the evidence quality of candidate interventions.

I. Submitted Materials

Applicants will submit a variety of documents that allow a panel of expert reviewers to rate objectively the evidence for an intervention's impact on substance abuse or mental health outcomes. Materials submitted may include:

- Descriptive program summaries, including the specific outcomes targeted;
- Research reports and published and unpublished articles to provide scientific evidence (experimental or quasi-experimental studies) about the effectiveness of the intervention for improving specific outcomes;
- Documents to verify that participants were assured privacy and freedom from negative consequences regardless of participating (used to assess participant response bias, not human subjects protections per se); and
- Documents to provide evidence that outcomes and analytic approaches were developed through a theory-driven or hypothesis-based approach.

These materials will provide SAMHSA and potential reviewers with objective evidence to support conclusions about the validity and impact of the program or practice. Reviewers must be assured that program investigators did not capitalize on chance findings or excessive postintervention data analyses to find effects that were not components of the intervention design or theory.

II. Internal Review and Triage

Upon receipt, each set of materials will be assigned to an NREPP review coordinator (contractor staff), who will inventory and document the contents of the submission. The review coordinator will contact the applicant by phone and/or e-mail confirming receipt and notifying the applicant if additional application materials are required.

When all materials for a program have been received by the review coordinator, an internal review is conducted to eliminate those programs or practices that do not meet NREPP minimum evidence-based standards. These minimum standards are (1) An intervention that is consistent with SAMHSA's matrix of program priority areas; (2) one or more evaluations of the intervention using an experimental or quasi-experimental design; and (3) statistically significant intervention outcome(s) related to either the prevention or treatment of mental or substance use disorders. Non-reviewed programs will receive written notification of this decision, including problematic or missing components of their application, and may be considered for re-review at a later date.

SAMHSA will maintain oversight over the entire NREPP application and selection process. Moreover, SAMHSA's Administrator and Center Directors may establish specific program and practice areas for priority review.

III. Ratings by Reviewers

For all NREPP applications determined appropriate for review, three (3) independent, external reviewers will evaluate and rate the intervention. Reviewers are doctoral-level researchers and practitioners who have been selected based on their training and expertise in the fields of mental health promotion or treatment and/or substance abuse prevention or treatment. Moreover, reviewers will be thoroughly trained in the NREPP review process, and will be monitored and provided feedback periodically on their performance. Of note, interventions targeting individuals or populations with co-occurring mental health and substance use disorders (or other cross-domain initiatives) will be assigned to reviewers across these categorical domains.

To maintain the objectivity and autonomy of the peer review process, SAMHSA will not disclose to the public or applicants the identities of individual reviewers assigned to specific reviews. On a periodic basis, SAMHSA may post listings of reviewer panels within specific SAMHSA domains as an informational resource to the public.

Reviewers will be selected based on their qualifications and expertise related to specific interventions and/or SAMHSA priority areas. In addition to reviewers identified by SAMHSA, NREPP will consider third-party and self-nominations to become part of the reviewer pool. All reviewers will provide written assurance, to be maintained on file with the NREPP contractor, that they do not have a current or previous conflict of interest (e.g., financial or business interest) that might impact a fair and impartial review of specific programs or practices applying for NREPP review.

Reviewers provide independent assessments of the evidence quality and provide numerical summary scores across the 16 outcome-specific evidence quality criteria. Each criterion is scored on a 0 to 4 scale. The 16 evidence quality criteria are presented below.

Individual-Level Outcome Evidence Rating Criteria

1. Theory-Driven Measure Selection

Outcome measures for a study should be selected before data are collected and should be based on a priori theories of hypotheses.

0 = The applicant selected the measure after data collection for the apparent purpose of obtaining more favorable results than would be expected from using the measures originally planned, OR there is no documentation of selection prior to data analysis.

4 = Documentation shows that the applicant selected the measure prior to study implementation, OR the measure was selected after study inception, but before data analysis, and is supported by a peer review panel or literature related to study theories or hypotheses.

2. Reliability

Outcome measures should have acceptable reliability to be interpretable. ''Acceptable'' here means reliability at a level that is conventionally accepted by experts in the field.

0 = No evidence of measure realibility.

1 = Reliability coefficients indicate that some but not all relevant types of reliability (e.g., test-retest, inter-rater, inter-item) are acceptable.

3 = All relevant types of realibility have been documented to be at acceptable levels in studies by the applicant.

4 = All relevant types of reliability have been documented to be acceptable levels in studies by independent investigators.

3. Validity

Outcome measures should have acceptable validity to be interpretable. ''Acceptable'' here means validity at a level that is conventionally accepted by experts in the field.

0 = No evidence of measure validity, or some evidence that the measure is not valid.

1 = Measure has face validity.

3 = Studies by applicant show that measure has one or more acceptable forms of criterion-related validity that are correlated with appropriate, validated measures or objective criteria; OR, as an objective measure of response, there are procedural checks to confirm data validity, but they have not been adequately documented.

4 = Studies by independent investigators show that measure has

one or more acceptable forms of criterion-related validity that are correlated with appropriate, validated measures or objective criteria; OR, as an objective measure of response, there are adequately documented procedural checks that confirm data validity.

4. Intervention Fidelity

The ''experimental'' intervention implemented in a study should have fidelity to the intervention proposed by the applicant. Instruments that have tested acceptable psychometric properties (e.g., interrator reliability, validity as shown by positive association with outcomes) provides the highest level of evidence.

0 = There is evidence the intervention implemented was substantially different from the one proposed.
1 = There is only narrative evidence that the applicant or provider believes the intervention was implemented with acceptable fidelity.
2 = There is evidence of acceptable fidelity in the form of judgment(s) by experts, based on limited on-site evaluation and data collection.
3 = There is evidence of acceptable fidelity, based on the systematic collection of data on factors such as dosage, time spent in training, adherence to guidelines or a manual, or a fidelity measure with unspecified or unknown psychometric properties.
4 = There is evidence of acceptable fidelity from a tested fidelity instrument shown to have reliability and validity.

5. Comparison Fidelity

A study's comparison condition should be implemented with fidelity to the comparison condition proposed by the applicant. Instruments for measuring fidelity that have tested acceptable psychometric properties (e.g., interrater reliability, validity as shown by predicted association with outcomes) provide the highest level of evidence.

0 = There is evidence that the comparison condition implemented was substantially different from one proposed.
1 = There is only narrative evidence that the applicant or provider believes the comparison condition was implemented with fidelity.
2 = Researchers report observational or administrative data that the comparison condition was implemented with fidelity.
3 = Documentation confirms that comparison group participants did not receive interventions that were very similar or identical to intervention participants, AND there is documentation of degree of participation in any comparison conditions such as lectures or treatment.
4 = There is evidence from a tested instrument suggesting that the comparison condition was implemented with fidelity.

6. Nature of Comparison Condition

The quality of evidence for an intervention depends in part on the nature of the comparison condition(s), including assessments of their active components and overall effectiveness. Interventions have the potential to cause more harm than good; therefore, an active comparison intervention should be shown to be better than no treatment.

0 = There was no comparison condition.
1 = The comparison condition is an active intervention that has not been proven to better than no treatment.
2 = The comparison condition is no service or wait-list, or an active intervention shown to be as effective as or better than no treatment.
3 = The comparison condition is an attention control.
4 = The comparison condition was shown to be as safe or safer and more effective than an attention control.

7. Assurances to Participants

Study participants should always be assured that their responses will be kept confidential and not affect their care or services. When these procedures are in place, participants are more likely to disclose valid data.

0 = There was no effort to encourage and reassure subjects about privacy and that consent or participation would have no effect on services.
1 = Data collector was the service provider, AND there were documented assurances to participants about privacy and that consent or participation would have no effect on care or services.
2 = Data collector was not the service provider. There were indications, but no documentation, that participants were assured about their privacy and that consent or participation would have no effect on care or services.
4 = Data collector was not the service provider, AND there were documented assurances to participants about privacy and that consent or participation would have no effect on care or services; OR, data were not collected directly from participants.

8. Participant Expectations

Participants can be biased by how an intervention is introduced to them and by an awareness of their study condition. Information used to recruit and inform study participants should be carefully crafted to equalize expectations. Masking treatment conditions during implementation of the study provides the strongest control for participant expectancies.

0 = Investigators did not make adequate attempts to mask study conditions or equalize expectations among participants in the experimental and comparison conditions, or differential participant expectations were measured and found to be too great to control for statistically.
2 = Investigators attempted to mask study conditions or equalize expectations among participants in the experimental and comparison conditions. Some participants appeared likely to have known their study condition assignment (experimental or comparison).
3 = Investigators attempted to mask study conditions or equalize expectations among participants in the experimental and comparison conditions. Some participants appeared likely to have known their study condition assignment (experimental or comparison), but these differential participant expectations were measured and appropriately controlled for statistically.
4 = Investigators adequately masked study conditions. Participants did not appear likely to have known their study condition assignment.

9. Standardized Data Collection

All outcome data should be collected in a standardized manner. Data collectors trained and monitored for adherence to standardized protocols provide the highest quality evidence of standardized data collection.

0 = Applicant did not use standardized data collection protocols.
2 = Data was collected using standardized protocol and trained data collectors.
3 = Data was collected using standardized protocol and trained data collectors, with evidence of good initial adherence by data collectors to the standardized protocol.
4 = Data was collected using standardized protocol and trained data collectors, with evidence of good initial adherence to data collectors to the standardized protocol and evidence of data collector retraining

when necessary to control for rater ''drift.''

10. Data Collector Bias

Data collector bias is most strongly controlled when data collectors are not aware of the conditions to which study participants have been assigned. When data collectors are aware of specific study conditions, their expectations should be controlled for through training and/or statistical methods.

0 = Data collectors were not masked to participants' conditions, and nothing was done to control for possible bias, OR collector bias was measured and found to be too great to control for statistically.
2 = Data collectors were not masked to participants' conditions, but data collectors received training to reduce possible bias.
3 = Data collectors were not masked to participants' conditions; possible bias was appropriately controlled for statistically.
4 = Data collectors were masked to participants' conditions.

11. Selection Bias

Concealed random assignment of participants provides the strongest evidence of control for selection bias. When participants are not randomly assigned, covariates and confounding variables should be controlled as indicated by theory and research.

0 = There was no comparison condition, OR participants or providers selected conditions.
3 = Participants were not assigned randomly, but researchers controlled for theoretically relevant confounding variables, OR participants were assigned with non-concealed randomization.
4 = Selection bias was controlled with concealed random assignment.

12. Attrition

Study results can be biased by participant attrition. Statistical methods as supported by theory and research can be employed to control for attrition that would bias results, but studies with no attrition needing adjustment provide the strongest evidence that results are not biased.

0 = Attrition was taken into account inadequately, OR there was too much attrition to control for bias.
1 = No significant differences were found between participants lost to attrition and remaining participants.
2 = Attrition was taken into account by simpler methods that crudely estimate data for missing observations.
3 = Attrition was taken into account by more sophisticated methods that model missing data, observations, or participants.
4 = There was no attrition, OR there was no attrition needing adjustment.

13. Missing Data

Study results can be biased by missing data. Statistical methods as supported by theory and research can be employed to control for missing data that would bias results, but studies with no missing data needing adjustment provide the strongest evidence.

0 = Missing data were an issue and were taken into account inadequately, OR levels of missing data were too high to control for bias.
1= Missing data were an issue and were taken into account, but high quantity makes the control for bias suspect.
2= Missing data were an issue and were taken into account by simpler methods (mean replacement, last point carried forward) that simplistically estimate missing data; control for missing data is plausible.
3= Missing data were an issue and were taken into account by more sophisticated methods that model missing data; control for missing data very plausible.
4= Missing data were not an issue.

14. Analysis Meets Data Assumptions

The appropriateness of statistical analyses is a function of the properties of the data being analyzed and the degree to which meet statistical assumptions.

0= Analyses were clearly inappropriate to the data collected; severe violation(s) of assumptions make analysis uninterpretable.
1= Some data were analyzed appropriately, but for other analyses important violation(s) of assumptions cast doubt on interpretation.
2= There were minor violations of assumptions for most or all analyses, making interpretation of results arguable.
3= There were minor violations of assumptions for only a few analyses; results were generally interpretable.
4= There were no violations of assumptions for any analysis.

15. Theory-Driven Selection of Analytic Methods

Analytic methods should be selected for a study based on a priori theories or hypotheses underlying the intervention. Changes to analytic methods after initial data analysis (e.g., to ''dredge'' for significant results) decrease the confidence that can be placed in the findings.

0= Analysis selected appears inconsistent with the intervention theory or hypotheses; insufficient rational provided by investigator.
1= Analysis selected appears inconsistent with the intervention theory or hypotheses, but applicant provides a potentially viable rationale.
3= Analysis is widely accepted by the field as the most consistent with study theory or hypotheses; no documentation showing methods were selected prior to data analysis.
4= Analysis is widely accepted by the field as the most consistent with study theory or hypotheses; documentation shows that methods were selected prior to data analysis.

16. Anomalous Findings

Findings that contradict the theories and hypotheses underlying an intervention suggest the possibility of confounding causal variables and limit the validity of study findings.

0 = There were anomalous findings suggesting alternate explanations for outcomes reported.
4 = There were no anomalous findings, OR researchers explained anomalous findings in a way that preserves the validity of results reported.

Based upon the independent reviewer assessments, review coordinators will compute average evidence quality ratings for specific outcome measures (based on the 16 evidence quality criteria), and then ask reviewers to determine the overall intervention outcome evidence ratings according to two components: quality of evidence and intervention replications. Average evidence quality ratings scores below 2.0 will be considered ''insufficient current evidence'' for the effectiveness of a given outcome, and will not be included in the Registry. Evidence quality rating scores of 2.0 to 2.5 will be considered ''emerging evidence'' for effectiveness, and scores of 2.5 and higher (4.0 is the maximum) will be considered ''strong evidence.''

Specific rating category labels for effective outcomes remain to be finalized, but might include categories such as: (1) Strong evidence with independent replication(s); (2) Strong evidence with developer replication(s); (3) Strong evidence without replication; (4) Emerging evidence with independent replication(s); (5) Emerging evidence with developer replication(s); and (6) Emerging evidence without replication.

IV. Applicant Notification

Applicants will be notified in writing of their final NREPP rating category(s) by the SAMHSA Administrator or his/

her designee within 2 weeks following the completion of the review. This notification will include the summary comments of reviewers as well as the consensus ratings on each review criteria. Where relevant, the notification letter will provide applicants with the effective date of the program status designation.

Applicants will have the opportunity to appeal any review decision by submitting a written request to the NREPP contractor within 30 days of notification. Appeals will be resolved through the assignment of two (2) additional reviewers to conduct focused reviews of the evidence quality for specific, disputed outcome ratings. Reviews conducted as part of a formal appeal process will be independent and reviewers will be unaware of previous ratings and decisions. The numeric evidence ratings will be averaged across the five (i.e., 3 original; 2 appeal) reviews for a final determination of intervention outcome rating(s).

V. Utility Descriptors

The NREPP utility descriptors will provide information to program purchasers and planners, service providers, consumers and the general public about the transferability of intervention technologies to different (including non-research-based) settings. These descriptors complement NREPP's scientific evidence-based program and practice ratings with information pertaining to the following dimensions:

1. Implementation. What kinds of materials are available to support implementation and what audiences are they appropriate for? What kinds of training and training resources are available to support implementation?

2. Quality Monitoring. What tools, procedures, and documentation are available to support quality monitoring and quality improvement as the program or practice is implemented?

3. Unintended or Adverse Events. What procedures, systems and data have been identified to indicate whether the intervention has ever resulted in unintended or adverse events?

4. Population Coverage. Were the study samples recruited representative of the persons identified to receive the intervention in the theory/framework?

5. Cultural Relevance and Cultural Competence. Were the outcomes demonstrated to be effective and applicable to specific demographic and culturally defined groups? If so, are training and other implementation materials available to promote culturally competent implementation of the intervention?

6. Staffing. What is aggregate level of staffing (e.g., FTEs) required to implement the intervention effectively? What are the individual skills, expertise, and training required of staff to deliver the intervention?

7. Cost. What are the estimated start-up and annual costs per person served and unit of service for the intervention at full operation?

Interventions with outcomes achieving any one of the effective statuses will be asked to provide descriptive information about the intervention's readiness for implementation, appropriateness for different populations, freedom from unintended or adverse effects, and staffing and cost requirements. These utility descriptors will be featured on the NREPP Web site to help assure a proper match between specific prevention and treatment interventions and the settings and populations to which they are most appropriate.

In light of SAMHSA's commitment to consumer and family involvement, the agency is seeking ways to ensure that these groups provide input into the assessment of interventions that achieve NREPP status. SAMHSA seeks suggestions regarding the most useful and efficient way to conduct this process (see Question 7 below).

Review Process for Determining Population-, Policy-, and System-Level Outcome Ratings for Interventions

The NREPP Evidence Rating Criteria for Population-, Policy-, and System-Level Outcomes are proposed as the basis for reviewer ratings of outcomes generated by community prevention coalitions and other environmental interventions to promote resiliency and recovery at the community level. SAMHSA's rationale for use of these separate criteria comes through a recognition that some interventions may be designed to affect a community over time, and that the prevailing scientific standards for assessing the effectiveness of these interventions may indeed be different than those for interventions seeking to change individual-level outcomes.

An outcome of a prevention or treatment intervention qualifies for review under these 12 criteria only when it can be included in one of the following three categories:

1. *Population-Level Outcome*—measures the effect of an intervention of an existing, predefined population. Examples of such existing, predefined populations include ''all youth residing in a neighborhood,'' ''all female employees of a manufacturing plant,'' or ''all Native Americans receiving social services from a tribal government.'' ''All patients receiving a specific treatment,'' in contrast, cannot be defined as an existing, predefined population because that population would have come into existence as a direct response to the intervention.

2. *Policy-Level Outcome*—measures the effect of an intervention on enactment, maintenance, or enforcement of policies that are assumed to have a positive aggregate impact on resiliency or recovery. Examples of such outcomes include ''the rate of passage of legislation restricting access to alcoholic beverages'' or ''the percentage of arrests for illicit drug manufacturing that result in convictions.''

3. *System-Level Outcome*—measures the effect of an intervention on prevention and treatment capacity, efficiency, or effectiveness in an existing system or community. Examples of such outcomes include ''increased capacity of a State government to quantify alcohol- or drug-related problems'' or ''increased effectiveness of a community treatment system to respond to the comprehensive needs of individuals with Axis I mental health diagnoses.''

To support the transparency of the review process, SAMHSA wants stakeholders to understand clearly the NREPP procedures and decision-making processes. All community coalition interventions included in NREPP will have demonstrated evidence of effectiveness at the population, policy, or system level. The ratings will indicate the strength of the supporting evidence, and may be as follows:

(1) Strong evidence with replication;

(2) Strong evidence without replication;

(3) Emerging evidence with replication; and

(4) Emerging evidence without replication.

All NREPP evidence ratings are defined at the level of specific outcomes. The 12 evidence rating criteria used for population-, policy- and system-level outcomes, summarized as an average Evidence Quality Score (EQS) for each outcome, allow independent expert reviewers to score along dimensions of outcome measurement, intervention fidelity, comparison conditions, participant and data collector biases, design and analysis, and anomalous findings. Each of the 12 criteria is assessed by independent reviewers on a 0 to 2 scale, in which a ''1'' indicates that methodological rigor may have been acceptable and a ''2'' indicates that adequate methodological rigor was achieved for this type of outcome.

Preliminary discussions of classifications have suggested that ''Strong evidence'' be defined as an average EQS of 1.75 or above (out of a possible 2.0), and that ''Emerging evidence'' be defined as an average EQS between 1.50 and 1.74 (out of a possible 2.0).

The 12 criteria applied to each population-, policy-, or system-level outcome measures are:

1. Logic-Driven Selection of Measures
2. Reliability
3. Validity
4. Intervention Fidelity
5. Nature of Comparison Condition
6. Standardized Data Collection
7. Data Collector Bias
8. Population Studied
9. Missing Data
10. Analysis Meets Data Assumptions
11. Theory-Driven Selection of Analytic Methods
12. Anomalous Findings

Outcome Measurement Criteria

1. Logic-Driven Selection of Measures

Outcome measures should be based on a theory or logic model that associates them with the intervention.

0 = The applicant appears to have selected outcome measures for the purpose of identifying favorable results rather than from a logic-based rationale.
1 = There is no explicit description of a guiding logic model or theory for measures, although a rationale for the inclusion of most measures can be inferred.
2 = Measures are supported by a theory or logic model that associates the intervention with the outcome.

2. Reliability

Outcome measures should have acceptable reliability to be interpretable. ''Acceptable'' here means reliability at a level that is conventionally accepted by experts in the field.

0 = No evidence of reliability of measures is presented.
1 = Relevant reliability measures are in the marginal range.
2 = Relevant reliability measures are in clearly acceptable ranges.

3. Validity

Outcome measures should have acceptable validity to be interpretable.

0 = No evidence of validity of measures is presented or evidence that is presented suggests measures are not valid.
1 = Measures has face validity.
2 = Relevant validity has been documented to be at acceptable levels in independent studies.

4. Intervention Fidelity

The intervention should be well defined and its implementation should be described in sufficient detail to assess whether implementation affected outcomes.

0 = The intervention and/or its implementation are not described in sufficient detail to verify that the intervention was implemented as intended.
1 = The intervention and its implementation are described in adequate detail, including justification for significant variation during implementation.
2 = The intervention and its implementation are described in adequate detail, reflecting variation during implementation with little or no plausible impact on outcomes.

5. Nature of Comparison Condition

The quality of evidence for an intervention depends in part on the nature of the comparison condition(s).

0 = Research design either lacks a comparison condition, or employs a before/after comparison.
1 = Comparison condition was no service or wait-list (including baseline comparison for a multipoint time series), or an active intervention that has not been shown to be safer or more effective than no service.
2 = Comparison condition was an active intervention shown to be as safe as, or safer and more effective than, no service.

6. Standardized Data Collection

All outcome data should be collected in a standardized manner. Data collectors trained and monitored for adherence to standardized protocols provide the highest quality evidence of standardized data collection.

0 = Data collection or archival sources used by the evaluation to assess outcome did not use standardized data collection protocol(s).
1 = All outcome data were collected using standardized protocol(s).
2 = All outcome data were collected using standardized protocol(s) and trained data collectors.

7. Data Collector Bias

Data collector bias is most strongly controlled when data collectors are not aware of the interventions to which populations have been exposed. When data collectors are aware of specific interventions, their expectations should be controlled for through training and/or statistical analysis methods on resultant data.

0 = Data collectors were not masked to the population's condition, and nothing was done to control for possible bias, OR collector bias was identified and not controlled for statistically.
1 = Data collectors were not masked to the population's condition; possible bias was appropriately controlled for statistically or through training.
2 = Data collectors were masked to the population's condition, or only archival data was employed.

8. Population Studied

0 = A single group pre/posttest design was applied without a comparison group, OR the alleged comparison group is significantly different from the population receiving the intervention.
1 = Population(s) were studied using time trend analysis, multiple baseline design, or a regression-discontinuity design that uses within-group differences as a substitute for comparison groups.
2 = Population matching or similar techniques were used to compare outcomes of population that received the intervention with the outcomes of a valid comparison group.

9. Missing Data

Study results can be biased by missing data. Statistical methods as supported by theory and research can be employed to control for missing data that would bias results, but studies with no missing data needing adjustment provide the strongest evidence.

0 = Missing data were an issue and were taken into account inadequately, OR levels of missing data were too high to control for bias.
1 = Missing data were an issue and were taken into account, but high quality makes the control for bias suspect.
2 = Missing data were not an issue or were taken into account by methods that estimate missing data.

10. Analysis Meets Data Assumptions

The appropriateness of statistical analysis is a function of the properties of the data being analyzed and the degree to which data meet statistical assumptions.

0 = Analyses were clearly inappropriate to the data collected; severe violation(s) of assumptions make analysis uninterpretable.
1 = There were minor violations of assumptions, making interpretation of results arguable.
2 = There were no or only very minor violations of assumptions; result were generally interpretable.

11. Theory-Driven Selection of Analytic Methods

In addition to the properties of the data, analytic methods should be based on a logic model or theory underlying the intervention. Changes to analytic methods after initial data analysis (e.g., to dredge for significant results) decrease the confidence that can be placed in the findings.

0 = Analysis selected appears inconsistent with the intervention theory or hypotheses; insufficient rationale was provided by the investigator.
1 = Analysis selected appears inconsistent with the intervention logic model or hypotheses, but the investigator provides a potentially viable rationale.
2 = Analysis is widely accepted by the field as consistent with the intervention logic model or hypotheses.

12. Anomalous Findings

Findings that contradict the theories and hypotheses underlying an intervention suggest the possibility of confounding causal variables and limit the validity of study findings.

0 = There were anomalous findings suggesting alternate explanations for outcomes reported that were not acknowledged by the applicant.
1 = There were a few anomalous findings, but additional analysis or previous literature cited by the applicant provide a reasonable explanation.
2 = There were no anomalous findings, OR researchers explained anomalous findings in a way that preserves the validity of results reported.

Re-Review of Existing NREPP Programs

As noted above, SAMHSA believes it is important to ensure that both current and future NREPP interventions meet consistent scientific standards so that the public and other interested stakeholders can be confident in the effectiveness of these interventions. With this in mind, SAMHSA is committed to expeditiously re-reviewing all existing NREPP programs under the new process. As part of this effort, SAMHSA plans to provide—directly or indirectly—sufficient resources to each existing NREPP program to cover costs associated with a re-review. In addition, programs already received by NREPP and pending review will be reviewed under the new process. If additional support is needed by these pending programs regarding the new review processes, these resources will also be provided.

In order to accomplish these re-reviews efficiently and expeditiously, NREPP review coordinators will work with each program to obtain any additional documentation that might be needed for re-review. These review coordinators will then conduct a re-review of each program against the new review criteria. Programs with favorable re-reviews will be included in the new NREPP system when it is launched in 2006. Programs not receiving favorable re-reviews will have the opportunity to appeal the re-review decision, and will be eligible for re-review by independent, external reviewers. However, the schedule for re-reviews of appealed programs will be subject to SAMHSA Administrator and SAMHSA Center Director review priorities.

New Web Site

The primary goal of the revised NREPP Web site—*http://www.nationalregistry.samhsa.gov*—will be to provide the public with contemporary and reliable information about the scientific basis and practicality of interventions to prevent and treat mental and substance use disorders. All interventions achieving NREPP status will be listed on the Web site. Average ratings and evaluate scores from scientific peer reviewers, as well as information on the utility and transferability of these interventions, will be posted on the site.

In addition, a searchable outcomes database of evidence-based interventions will be a key feature. The Web site will also contain a variety of learning and self-assessment tools for prospective and current NREPP interventions to continuously improve their scientific evidence base. Features of the new Web site will include:

- Evidence rating criteria and utility descriptors
- Detailed review guidelines
- Self-assessment tool to assist interventions in determining if they are ready to submit an application to NREPP
- Detailed information on how to apply
- Links to technical assistance resources available to potential applicants
- Relevant resources, including publications, presentations, links, and other supplemental materials
- Frequently Asked Questions (FAQs)
- Information on how to contact a representative from the NREPP team
- Glossary of terms

Support for Innovative Interventions

SAMHSA recognizes that the long term utility and value of NREPP rests, in part, on the ability of SAMHSA and others to support efforts to evaluate and document the evidence-base of innovative interventions in ways that will maximize their opportunity for entry into NREPP. SAMHSA is considering potential options for both the direct and indirect provision of such support, and will seek to clarify its intentions in this area sometime in Fiscal Year 2006.

Questions To Consider in Making Your Comments

Responders should feel free to comment on any, or all, questions, as well as provide relevant suggestions not included in the specific questions. In order to facilitate the compilation and analysis of comments, responders are asked to be explicit about the questions to which they are responding.

1. SAMHSA is seeking to establish an objective, transparent, efficient, and scientifically defensible process for identifying effective, evidence-based interventions to prevent and/or treat mental and substance use disorders. Is the proposed NREPP system—including the suggested provisions for screening and triage of applications, as well as potential appeals by applicants—likely to accomplish these goals?

2. SAMHSA's NREPP priorities are reflected in the agency's matrix of program priority areas. How might SAMHSA engage interested stakeholders on a periodic basis in helping the agency determine intervention priority areas for review by NREPP?

3. There has been considerable discussion in the scientific literature on how to use statistical significance and various measures of effect size in assessing the effectiveness of interventions based upon both single and multiple studies (Schmidt & Hunter, 1995; Rosenthal, 1996; Mason, Schott, Chapman, & Tu, 2000: Rutledge & Loh, 2004). How should SAMHSA use statistical significance and measures of effect size in NREPP? Note that SAMHSA would appreciate receiving citations for published materials elaborating upon responders suggestions in this area.

4. SAMHSA's proposal for NREPP would recognize as effective several categories of interventions, ranging from those with high-quality evidence and more replication to those with lower quality evidence and fewer replications. This would allow for the recognition of emerging as well as fully evidence-based interventions. Some view this as a desirable feature that reflects the continuous nature of evidence; provides important options for interventions

recipients, providers, and funders when no or few fully evidence-based interventions are available; and helps promote continued innovation in the development of evidence-based interventions. Others have argued that several distinct categories will confuse NREPP users. Please comment on SAMHSA's proposal in this area.

5. SAMHSA recognizes the importance of considering the extent to which interventions have been tested with diverse populations and in diverse settings. Therefore, the agency anticipates incorporating this information into the web site descriptions of interventions listed on NREPP. This may allow NREPP users to learn if interventions are applicable to their specific needs and situations, and may also help to identify areas where additional studies are needed to address the effectiveness of interventions with diverse populations and in diverse locations.

SAMHSA is aware that more evidence is needed on these topics. Please comment on SAMHSA's approach in this area.

6. To promote consistent, reliable, and transparent standards to the public, SAMHSA proposes that all existing programs on NREPP meet the prevailing scientific criteria described in this proposal, and that this be accomplished through required re-reviews of all programs currently on NREPP. SAMHSA has considered an alternative approach that would ''grandfather'' all existing NREPP programs under the new system, but would provide clear communication that these existing programs have not been assessed against the new NREPP scientific standards. Please comment on which approach you believe to be in the best interests of SAMHSA stakeholders.

7. What types of guidance, resources, and/or specific technical assistance activities are needed to promote greater adoption of NREPP interventions, and what direct and indirect methods should SAMHSA consider in advancing this goal?

8. SAMHSA is committed to consumer, family, and other nonscientist involvement in the NREPP process. The panels convened by SAMHSA and described earlier in this notice suggested that these stakeholders be included specifically to address issues of intervention utility and practicality. Please comment on how consumer, family, and other nonscientist stakeholders could be involved in NREPP.

9. SAMHSA has identified NREPP as one source of evidence-based interventions for selection by potential agency grantees in meeting the requirements related to some of SAMHSA's discretionary grants. What guidance, if any, should SAMHSA provide related to NREPP as a source of evidence-based interventions for use under the agency's substance abuse and mental health block grants?

10. SAMHSA believes that NREPP should serve as an important, but not exclusive source, of evidence-based interventions to prevent and/or treat mental and substance use disorders. What steps should SAMHSA take to promote consideration of other sources (e.g., clinical expertise, consumer or recipient values) in stakeholders' decisions regarding the selection, delivery and financing of mental health and substance abuse prevention and treatment services?

11. SAMHSA anticipates that once NREPP is in operation, various stakeholders will make suggestions for improving the system. To consider this input in a respectful, deliberate, and orderly manner, SAMHSA anticipates annually reviewing these suggestions. These reviews would be conducted by a group of scientist and nonscientist stakeholders knowledgeable about evidence in behavioral health and the social sciences. Please comment on SAMHSA's proposal in this area.

References

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[FR Doc. 05–17034 Filed 8–25–05; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Entries of Antidumping and/or Countervailing Duties Destroyed September 11, 2001

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection (CBP) suspends the liquidation of entries of merchandise subject to antidumping and/or countervailing duties (AD/CVD) until liquidation instructions are received from the Department of Commerce. Due to the extended liquidation cycle of AD/CVD entries, CBP is only now beginning to receive liquidation instructions from the Department of Commerce for many AD/CVD entries from previous years. Unfortunately, AD/CVD entry documents which were maintained by CBP at 6 World Trade Center in New York, New York, were destroyed in the terrorist attack of September 11, 2001. This notice announces that CBP is providing importers with the option to provide a reconstructed entry summary package to CBP for liquidation of these entries. Failure by the importer to provide a reconstructed entry summary package within the time frame described in this notice may result in liquidation by CBP of the entry, or entries, based upon the information available within the Automated Commercial System (ACS).

DATES: If a reconstructed entry summary package is not received by the Bureau of Customs and Border Protection within 30 days following publication by the Department of Commerce that suspension of the liquidation of the subject entry, or entries, has been lifted, and the Department of Commerce has issued final assessment instructions, CBP will begin liquidating the entries based on the information available in ACS.

ADDRESSES: The reconstructed entry package should be mailed to: Customs and Border Protection, ATTN: ADCVD 6WTC Reconstructed Entry(s), 1100 Raymond Boulevard, Newark, NJ 07102.

FOR FURTHER INFORMATION CONTACT: Christine Furgason, Office of Field Operations, (202) 344–2293. For inquiries about specific entry summary packages: Walter Springer, Supervisory Import Specialist, Newark, N.J., (973) 368–6785. Importers, or their representatives, may also directly contact the Import Specialist Teams to whom the entries were assigned. A party making a telephonic inquiry regarding a specific entry summary package should be prepared to provide its importer name and identification number.

SUPPLEMENTARY INFORMATION:

Background

U.S. Antidumping and Countervailing Duty (AD/CVD) laws are intended to

counter unfair trade practices that result in injury to U.S. industry.

AD/CV investigations are typically initiated by a domestic industry or industry association, through the filing of a petition with the Department of Commerce (DOC), alleging unfair competition by foreign manufacturers or foreign countries. The DOC then investigates the allegations. If DOC makes a preliminary determination that dumping or subsidies exist, the International Trade Commission (ITC) must then make a determination as to whether an industry in the United States is materially injured or threatened with material injury, or whether the establishment of an industry (in the United States), is materially retarded by reason of the unfair competition. If final positive determinations are made, DOC orders CBP to assess AD/CV duties at rates determined by the DOC. The importer of record is responsible for paying these duties.

AD duties are appropriate where the DOC determines that a foreign firm ''dumps'' merchandise in the U.S. market, *i.e.* sells merchandise in the U.S. market at a price lower than its fair value. CV duties are appropriate when a foreign government unfairly subsidizes its industries that export to the United States. The purpose of AD/CV duties is to counteract the unfair advantages that the foreign manufacturer achieves through the dumping and/or subsidy practices.

Normally, CBP, upon instructions from the DOC, suspends the liquidation of entries of merchandise subject to additional antidumping and/or countervailing duties until the DOC instructs CPB to remove the suspension and liquidate the entries. Pursuant to title 19, Code of Federal Regulations, section 159.58 (19 CFR 159.58), CBP notifies concerned importers, consignees or their agents that liquidation of their entries has been suspended. The length of time for which an AD/CVD entry will be suspended depends, in part, on whether DOC conducts an administrative review. Also, if a decision by DOC regarding AD/CVD entries is challenged in the Court of International Trade (CIT), which happens frequently, the length of time of the suspension of liquidation may be increased dramatically. Consequently, liquidation of these types of entries may occur several years after the merchandise is originally entered and at AD/CVD rates that differ from the rate at the time of initial entry. For this reason, CBP may need to review the physical entry documents to determine the correct AD/CVD rate at liquidation. Depending upon the amount of information provided by the importer to CBP via their ABI transmission, CBP may not be able to determine various factors that are needed to assess the final margin. These factors may include the nature and amount of the merchandise, the producer of the goods, and the identity of the exporter.

Upon the completion of the various investigations and reviews, it is possible that an entry may be subject at liquidation to AD/CV duties in addition to those already assessed, may be liquidated as entered or may be liquidated at a different AD/CVD rate than previously deposited. For example, if it is finally determined that the subject merchandise was not subject to AD/CV duties, then a full refund may be in order.

Many AD/CVD entries stored at 6 World Trade Center were among those documents destroyed in the terrorist attack on September 11, 2001. The destroyed documents include those related to AD/CVD entries filed at the New York Seaport (port code 1001) and Newark/Elizabeth, N.J. (port code 4601, and sub-ports 4602, etc.). Although less likely, the destroyed documents may also include documents related to AD/CVD entries filed at JFK Airport/Jamaica/Queens NY, (port code 4701 and sub-ports 4702, etc.). Due to the extended liquidation cycle of AD/CVD entries, CBP is only now beginning to receive liquidation instructions from the DOC for these entries. Therefore, CPB is providing importers with the option to provide a reconstructed entry summary package to CBP for liquidation, when the suspension of liquidation of that importer's entry, or entries, has been lifted. Importers are provided public notice of the lifting of liquidation suspension. Any party awaiting the lifting of liquidation suspension by the DOC regarding its AD/CVD entry, or entries, should review the **Federal Register** on a regular basis. Any party unsure whether their entry or entries are affected by this notice, or with any other questions regarding a specific entry summary package, should call the appropriate telephone number provided in this notice or should contact the Import Specialist Team(s) to whom the entries were assigned.

Requirements; Failure To Timely Provide Reconstructed Entry Summary Package

It is in the importer's interest to provide the reconstructed entry summary package to CBP no later than 30 days following publication by the DOC that suspension of liquidation of the subject entry, or entries, has been lifted. Upon receipt of final assessment instructions from the Department of Commerce, CBP will begin the process of liquidating the entries based upon the information available (which may not be complete) within the Automated Commercial System (ACS).

Protests

As usual, CBP will consider timely protests, submitted pursuant to 19 CFR, part 174, of its liquidation of any entry or entries.

Dated: August 17, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–17045 Filed 8–25–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–21866; Amendment Nos. 1520–3, 1540–6, 1562–1]

Intent to Request Renewal From OMB of One Current Public Collection of Information: Enhanced Security Procedures at Ronald Reagan Washington National Airport

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of approval and extension.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by October 25, 2005.

ADDRESSES: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for

OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0035; Enhanced Security Procedures at Ronald Reagan Washington National Airport (DCA), 49 CFR part 1562. On July 19, 2005, the Transportation Security Administration (TSA) published an interim final rule (IFR) in the **Federal Register** (70 FR 41586) implementing the requirements of Sec. 823 of Vision 100—Century of Aviation Reauthorization Act (Pub.L. 108–176, 117 Stat. 2490, Dec. 12, 2003). In the IFR, TSA provided notice that it had sought emergency OMB approval for the information collections under this rule, which OMB subsequently approved on Aug. 17, 2005, and assigned OMB control number 1652–0035. Because this approval is only valid until Oct. 31, 2005, TSA is hereby requesting an extension of this information collection for the maximum 3-year period.

The IFR requires general aviation (GA) aircraft operators who wish to fly into and/or out of Ronald Reagan Washington National Airport (DCA) to designate a security coordinator and adopt a DCA Access Standard Security Program (DASSP). Once aircraft operators have complied with the DASSP requirements, they may be eligible to apply to the Federal Aviation Administration (FAA) for a reservation, and to TSA for authorization, to fly into and out of DCA.

To receive authorization for a flight, aircraft operators must submit certain information to TSA so that TSA can conduct name-based threat assessments on their crewmembers and passengers, including armed security officers (ASOs) who are required to be onboard. Each ASO must complete specialized training and receive authorization from TSA. The operators last point of departure must be from a Fixed Base Operator (FBO), which is an airport-based commercial enterprise that provides support services to aircraft operators, and which holds a security program issued by TSA at an airport designated by TSA (referred to in the IFR as ''gateway airports''). At each gateway airport, TSA will inspect the aircraft and will screen the passengers, their carry-on property, and property carried in the cargo hold of the aircraft before it departs for DCA.

TSA will require the following individuals to submit fingerprints and other identifying information: individuals designated as security coordinators; flight crewmembers who operate GA aircraft into and out of DCA in accordance with the IFR; and ASOs approved in accordance with the IFR. In addition to fingerprints, these individuals, along with individuals onboard each aircraft into DCA, will be required to submit the following information: (1) Legal name, including first, middle, and last, any applicable suffix, and any other names used; (2) current mailing address, including residential address if different than current mailing address; (3) date and place of birth; (4) social security number, (submission is voluntary, although recommended); (5) citizenship status and date of naturalization if the individual is a naturalized citizen of the United States; and (6) alien registration number, if applicable. TSA will use this information to perform a criminal history records check (CHRC) and a security threat assessment in order to determine whether the individuals pose a security threat. For flight crewmembers, TSA will also use this information to check their FAA records to determine whether they have violated restricted airspace. As part of the threat assessment process, TSA will share the information with the Federal Bureau of Investigation (FBI) and the FAA. ASOs will also be required to provide personal history information (employment, criminal, education, training, military, medical, and law enforcement), as well as a photograph and weapon information.

Aircraft operators will be required to provide TSA with the flight plan and registration number of their aircraft that will operate to or from DCA. This information will also be shared with FAA for purposes of tracking and identifying approved aircraft. TSA estimates a total of 11,785 respondents annually. The total number of annual burden hours is estimated to be 13,297 hours per year.

Issued in Arlington, Virginia, on August 23, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–17054 Filed 8–23–05; 4:30 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2357–05]

RIN 1615–ZA26

Extension of the Designation of Liberia for Temporary Protected Status; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of correction.

SUMMARY: The U.S. Citizenship and Immigration Services (USCIS) published a notice in the **Federal Register** on August 16, 2005 at 70 FR 48176 to announce the extension of the designation of Temporary Protected Status (TPS) for nationals of Liberia and aliens having no nationality who last habitually resided in Liberia. The August 16, 2005, notice states that the 60-day re-registration period begins August 16, 2005, and will remain in effect until October 17, 2005, instead of October 14, 2005, which is the 60th day and the date on which the re-registration period actually ends. USCIS hereby corrects the prior notice to show October 14, 2005, as the ending date of the re-registration period.

DATES: This correction is effective August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Kopp Keyack, Residence and Status Services, Office of Program and Regulations Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on August 16, 2005 (70 FR 48176), the Notice contains an error that is in need of correction.

Correction of Publication

Accordingly, the publication on August 16, 2005 (70 FR 48176), of the Notice that was the subject of FR Doc. 05–16308 is corrected as follows:

1. On page 48176, in the second column, in the sixth line under **DATES**,

the date ''October 17, 2005'' is corrected to read: ''October 14, 2005''.

2. On page 48177, in the third column, in the first line, the date ''October 17, 2005'' is corrected to read: ''October 14, 2005''.

3. On page 48179, in the second column, in the third line, the date ''October 17, 2005'' is corrected to read: ''October 14, 2005''.

Dated: August 22, 2005.

Stephen Tarragon,

Acting Director, Regulatory Management Division.

[FR Doc. 05–16955 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–28]

Notice of Proposed Information Collection: Comment Request; Loan Servicing of All Three Coinsurance Programs; Section 221(d), Section 223(f), and Section 232

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 25, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Policy and Participation Standards Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1320 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Loan Servicing of All Three Coinsurance Programs: Section 221(d), Section 223(f), and Section 232.

OMB Control Number, if applicable: 2502–0314.

Description of the need for the information and proposed use: Information is needed to review and evaluate the financial, physical, and managerial adequacy of multifamily housing, retirement service centers, and nursing homes with multimillion dollar coinsured loans to minimize risks and to protect these assets and the Government's interest.

Agency form numbers, if applicable: Form HUD–9815.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total annual burden hours is 2,257. The number of respondents is 11, and the average frequency of responses is 3, for a total of 33 annual responses. The estimated time to prepare, submit, and maintain the information is approximately 68.38 hours for each response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 18, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E5–4656 Filed 8–25–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior; Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, September 9, 2005–1:30 p.m. to 4 p.m.

ADDRESSES: Lehigh Valley Convention & Visitors Bureau, 2200 Avenue A, Bethlehem, PA 18017.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: August 22, 2005.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 05–16988 Filed 8–25–05; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan and Environmental Assessment for the Agassiz National Wildlife Refuge, Marshall County, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Final

Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Agassiz NWR, Minnesota.

The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

ADDRESSES: Copies of the Final CCP are available on compact disk or hard copy. You may access and download a copy via the planning Web site at *http://www.fws.gov/midwest/planning/agassiz/index.html* or you may obtain a copy by writing to the following address: U.S. Fish and Wildlife Service, Agassiz National Wildlife Refuge, 22996 290th Street NE., Middle River, Minnesota 56737–9754.

FOR FURTHER INFORMATION CONTACT: Margaret Anderson at (218) 449–4115.

SUPPLEMENTARY INFORMATION: The Agassiz NWR, established in 1937, is located in the northwest corner of Minnesota at the juncture of the northern boreal forest, the eastern deciduous forest, and the tallgrass prairie. The Refuge's 61,500 acres are a key breeding ground for 17 species of ducks, as well as an important migration rest stop for waterfowl, but it is also noted for gray wolves, moose, and nesting Bald Eagles.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*), requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years.

A major focus of the refuge for the next 15 years will be to manage a large area of uplands as a grassland/shrubland matrix. This action will increase critical native habitats that have declined locally and in Minnesota over the past century, such as prairie grasslands, sedge meadow, and bur oak/savanna. Simultaneously, the Refuge will aim to reduce the area now taken over by lowland shrub, aspen/mixed hardwood, and cattail or phragmites-dominated marsh, which either have lower intrinsic value for wildlife or have simply become too abundant. In turn, these habitat shifts will help those wildlife species associated with the rarer habitats.

The Refuge proposes to restore a more natural sinuosity on two interior watercourses by lowering water levels in three pools. The loss of conifers in the Wilderness Area, possibly due to high water conditions, will also be studied.

Expanded public use opportunities include enhancing winter wildlife viewing with a designated, un-groomed cross-country/snowshoe/walking trail. New hunting opportunities to be provided include: archery/deer, muzzleloader/deer, and ruffed grouse hunting during and after the firearms/deer season; and a ''youth'' waterfowl hunt in the Farmes Pool area in conjunction with the state youth waterfowl hunt season and regulations.

Dated: June 21, 2005.

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 05–16991 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Comprehensive Conservation Plan and Environmental Assessment for Squaw Creek National Wildlife Refuge (NWR), Mound City, MO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the final Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Squaw Creek NWR, Mound City, Missouri. The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and using the preferred alternative, goals, and objectives, we describe how the Service intends to manage this refuge over the next 15 years.

ADDRESSES: Copies of the final CCP and EA are available on compact diskette or hard copy, you may obtain a copy by writing to: Squaw Creek National Wildlife Refuge, P.O. Box 158, Mound City, Missouri 64470 or you may access and download a copy at this Web site: *http://www.fws.gov/midwest/planning/squawcreek/index.html.*

FOR FURTHER INFORMATION CONTACT: Ron Bell at (660) 442–3187.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The planning process for Squaw Creek NWR began in 1999. Five management alternatives were considered. Alternative D, Optimizing Wildlife Habitat and Fish and Wildlife Populations With Enhanced Levels of Wildlife-dependent Recreation is the preferred alternative. This alternative seeks to maximize wildlife habitat and population management practices and opportunities without adversely impacting current levels of wildlife-dependent recreational opportunities. There will be no expansion of existing authorized boundaries.

The CCP identifies and increases wildlife-dependent recreational opportunities available to the public including: Initiating a managed spring snow goose hunt; investigating the potential for a fishing access area and a white-tailed deer hunt for physically challenged visitors; and enhancing trails for wildlife observation and

photography, and environmental education and interpretation.

Dated: May 13, 2005.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. 05–16992 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by September 26, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone (404) 679–4176; facsimile (404) 679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Services Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to ''*victoria_davis@fws.gov.*'' Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Stephanie Ann Clark, University of Alabama, Tuscaloosa, Alabama, TE108506–0.

The applicant requests authorization to take (capture, identify, photograph, collect tissue samples, salvage dead specimen, release) the following species: slender campeloma (*Campeloma decampi*), cylindrical lioplax (*Lioplax cyclostomaformis*), Tulotoma snail (*Tulotoma magnifica*), Anthony's riversnail (*Athearnia anthonyi*), Lacy Elimia (snail) (*Elimia crenatella*), painted rocksnail (*Leptoxis taeniata*), plicate rocksnail (*Leptoxis plicata*), round rocksnail (*Leptoxis ampla*), Tumbling Creek cavesnail (*Antrobia culveri*), flat pebblesnail (*Lepyrium showalteri*), royal marstonia (snail) (*Pyrgulopsis ogmorhaphe*), armored snail (*Pyrgulopsis* (=*Marstonia*) *pachyta*), painted snake coiled forest snail (*Anguispira picta*), noonday snail (*Mesodon clarki nantahala*), Magazine mountain shagreen (*Mesodon magazinensis*), Stock Island tree snail (*Orthalicus reses*), Cumberland elktoe (*Alasmidonta atropurpurea*), Appalachian elktoe (*Alasmidonta raveneliana*), fat three-ridge (mussel) (*Amblema neislerii*), Ouachita rock pocketbook (*Arkansia wheeleri*), birdwing pearlymussel (*Conradilla caelata*), fanshell (*Cyprogenia stegaria*), dromedary pearlymussel (*Dromus dromas*), shiny pigtoe (*Fusconaia cor*), finerayed pigtoe (*Fusconaia cuneolus*), Chipola slabshell (*Elliptio chipolaensis*), purple bankclimber (mussel) (*Elliptoideus sloatianus*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*Epioblasma capsaeformis*), Yellow blossom (pearlymussel) (*Epioblasma florentina florentina*), Curtis pearlymussel (*Epioblasma florentina curtisii*), tan riffleshell (*Epioblasma florentina walkeri*), upland combshell (*Epioblasma metastriata*), Catspaw (=purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*), southern acornshell (*Epioblasma othcaloogensis*), southern combshell (*Epioblasma (=Dysnomia) penita*), green blossom (pearlymussel) (*Epioblasma torulosa gubernaculum*), Tuberoled blossom (pearlymussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearlymussel) (*Epioblasma turgidula*), cracking pearlymussel (*Hemistena lata*), pink mucket (*pearlymussel*) (*Lampsilis abrupta*), fine-lined pocketbook (*Lampsilis altilis*), Higgins eye (*Lampsilis higginsii*), orange-nacre mucket (*Lampsilis perovalis*), Arkansas fatmucket (*Lampsilis powelli*), speckled pocketbook (*Lampsilis streckeri*), shinyrayed pocketbook (*Lampsilis subangulata*), Alabama lampmussel (*Lampsilis virescens*), Carolina heelsplitter (*Lasmigona decorata*), scaleshell mussel (*Leptodea leptodon*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), ring pink (mussel) (*Obovaria retusa*), little-wing pearlymussel (*Pegias fabula*), white wartyback (pearlymussel) (*Plethobasus cicatricosus*), orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*), clubshell (*Pleurobema clava*), black clubshell (*Pleurobema curtum*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), Cumberland pigtoe (*Pleurobema gibberum*), flat pigtoe (*Pleurobema marshalli*), ovate clubshell (*Pleurobema perovatum*), rough pigtoe (*Pleurobema plenum*), oval pigtoe (*Pleurobema pyriforme*), heavy pigtoe (*Pleurobema taitianum*), fat pocketbook (*Potamilus capax*), Alabama (=inflated) heelspitter (*Potamilus inflatus*), triangular kidneyshell (*Ptychobranchus greenii*), rough rabbitsfoot (*Quadrula cylindrical strigillata*), winged mapleleaf (*mussel*) (*Quadrula fragosa*), Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*), Appalachian monkeyface (pearlymussel) (*Quadrula sparsa*), stirrupshell (*Quadrula stapes*), pale lilliput (pearlymussel) (*Toxolasma*

cylindrellus), purple bean (*Villosa perpurpurea*), and Cumberland bean (pearlymussel) (*Villosa trabalis*). Take would occur while conducting presence/absence surveys and research studies. The proposed activities would occur in Alabama, Tennessee, Georgia, Florida, and Missouri.

Applicant: Thane R. Wibbels, University of Alabama at Birmingham, Birmingham, Alabama, TE108537–0.

The applicant requests authorization to take (collect and receive blood and tissue samples, place data loggers in nest, capture, identify, release) the Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), and olive ridley (*Lepidochelys olivacea*) sea turtles while conducting sex ratio and genetic analysis. The proposed activities would occur in Alabama and the Virgin Islands.

Applicant: Jess W. Jones, U.S. Fish and Wildlife Service, Department of Fisheries and Wildlife Services, Virginia Polytechnic Institute & State University, Blacksburg, Virginia, TE108813–0.

The applicant requests authorization to harass (collect, temporarily hold, translocate, release) oyster mussels (*Epioblasma capsaeformis*) while conducting restoration activities. The proposed activities would occur from the Tennessee section of the Clinch River upstream into the Virginia section of the river.

Applicant: Warren G. Montague, Ouachita National Forest, Waldon, Arkansas, TE108839–0.

The applicant requests authorization to take (collect non-viable eggs of) red-cockaded woodpeckers (*Picoides borealis*) while studying developmental analysis to determine fertility, while conducting genetic studies, and while conducting other applicable studies. The proposed activities would occur throughout the species' southern range.

Applicant: Ronald W. Rohrbaugh, Jr., Cornell Lab of Ornithology, Ithaca, New York, TE108852–0.

The applicant requests authorization to take (capture, identify, translocate, release, harass, inspect cavities of) Ivory-billed woodpeckers (*Campephilus principalis*) while conducting presence/absence studies and translocation activities and working to clearly document their existence and assess their ecology and behavior specific to the Mississippi delta region of eastern Arkansas. Presence/absence surveys would take place in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Missouri, and Illinois.

Applicant: Richard Frederick Lance, U.S. Army Research & Development Center, Vicksburg, Mississippi, TE108962–0.

The applicant requests authorization to harass (capture, collect tissue samples, release) a maximum of 1,000 gray bats (*Myotis grisescens*) while conducting non-lethal tissue sampling, primarily wing punches, and some experimental sampling of genetic source material through the collection of scat and buccal (mouth) swabs while conducting genetic studies. The proposed activities would take place at the following locations: Jesse James Cave, Edmonson County, Kentucky; Fern Cave, Jackson County, Alabama; Cave Mountain Cave, Newton County, Arkansas; Pearson Cave, Hawkins County, Tennessee; Tobbaccoport Saltpeter Cave, Steward County, Tennessee; Hubbards Cave, Warren County, Tennessee; Coffin Cave, Laclede County, Missouri; and Chimney Cave, Shannon County, Missouri. The proposed activities for smaller maternity and hibernating colonies would occur in Pulaski, Laclede, Wright, Reynolds, Shannon, Oregon, Dallas, Hickory, Camden, and Miller Counties, Missouri.

Applicant: Ronald E. Spears, Asheville, North Carolina, TE108990–0.

The applicant requests authorization to take (capture, identify, examine, measure, photograph, release) the gray (*Myotis grisescens*) and the Indiana (*Myotis sodalis*) bats while conducting presence/absence surveys throughout the states of North Carolina, South Carolina, Georgia, Tennessee, Kentucky, Arkansas, Alabama, Mississippi, and South Carolina.

Dated: August 10, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–16983 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit number issuance date
797485	International Wildlife Veterinary Services	70 FR 34791; June 15, 2005	July 21, 2005.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
098679	Brian J. Hansen	70 FR 7295; February 11, 2005	May 17, 2005.
102654	James J. Weyand	70 FR 29362; May 20, 2005	July 20, 2005.
102694	John J. Keslar	70 FR 29362, May 20, 2005	July 22, 2005.

Dated: August 5, 2005.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–17009 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Park Service

[ID 231 1610 DQ 051D]

Notice of Availability of the Proposed Management Plan and Final Environmental Impact Statement (EIS) for the Craters of the Moon National Monument and Preserve

AGENCIES: Bureau of Land Management (BLM) and National Park Service (NPS).

ACTION: Reissuance of a Notice of Availability of a Final EIS for a Proposed Resource Management Plan / General Management Plan (hereinafter, Proposed Plan/Final EIS), for the Craters of the Moon National Monument and Preserve. The Monument is located in Blaine, Butte, Lincoln, Minidoka, and Power Counties, in Idaho. (This Notice of Availability was prematurely released on August 12, 2005 and retracted.)

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the National Park and Recreation Act of 1978, and the National Environmental Policy Act of 1969, the Bureau of Land Management and the National Park Service have jointly prepared a Proposed Plan/Final EIS for the Craters of the Moon National Monument and Preserve. The Final EIS discusses public and agency comments received on the draft EIS. It describes and analyzes four alternative management strategies, each presenting a different approach to resolving issues identified through public scoping. Alternative A is the ''no action'' or continuation of present management alternative. Alternative B would promote more travel and access within the Monument. Alternative C would emphasize retention and enhancement of the Monument's primitive character. The Proposed Plan is Alternative D, the agency preferred alternative from the draft Plan/EIS, refined by public comment. Alternative D, which emphasizes protection and restoration of physical and biological resources, is also considered to be the environmentally preferred alternative.

DATES: No decision on the proposed plan will be made for at least 30 days after the Environmental Protection Agency publishes its notice of availability of this final EIS in the **Federal Register**. BLM regulations (43 CFR 1610.5–2) state that any person who participated in the planning process and has an interest that may be adversely affected may protest those proposed decisions that would be implemented on BLM-administered lands. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes its notice of availability.

The National Park Service regulations do not provide a formal protest process. However, persons wishing to communicate with the Regional Director of the NPS during the 30 days after the Environmental Protection Agency's notice is published may do so by sending correspondence to Jonathan B. Jarvis, Regional Director, National Park Service, 1111 Jackson Street, Oakland CA 94607.

Instructions for filing protests with the BLM are included in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The Proposed Plan/FEIS is posted on Web sites at *http://www.id.blm.gov/planning/craters/index.htm* or *http://www.nps.gov/crmo* and has been mailed to those who have indicated that they want to receive it in hard copy or on a compact disk. Additional copies in both paper and digital format are available in limited numbers. To receive a copy, write or call one of the individuals identified in the next paragraph.

FOR FURTHER INFORMATION CONTACT: Richard VanderVoet, Monument Manager, Bureau of Land Management, Shoshone Field Office, 400 West F Street, Shoshone, ID 83352–1522, phone (208) 732–7200 or John Apel Acting Superintendent, National Park Service, P.O. Box 29, Arco, ID 83213, phone (208) 527–3257.

SUPPLEMENTARY INFORMATION: Established in 1924, the Craters of the Moon National Monument was expanded by Presidential Proclamation 7373 on November 9, 2000, for the purpose of protecting the entire Great Rift volcanic zone and associated lava features, all objects of scientific interest. On August 21, 2002, Public Law 107–213 re-designated the National Park Service portion of the expanded Monument as a National Preserve. The Bureau of Land Management and National Park Service are managing the National Monument and Preserve cooperatively and are preparing one management plan to be implemented by both agencies.

The key components of the Proposed Plan are as follows:

- Promotes use of partnerships at off-site facilities such as visitor centers and state parks to provide Monument information and interpretation.
- Emphasizes protection of vegetation resources in North Laidlaw Park.
- Maintains a road network suitable for aggressive fire suppression and restoration activities within the Monument.
- Encourages outfitter and guide services in the expanded portion of the Monument, instead of new agency-provided services and facilities.
- Promotes a proactive Integrated Weed Management Program.
- Proactively protects and restores sagebrush steppe communities.
- Continues to focus visitor experience within the Monument on the existing lands and facilities located at the north end of the Monument.
- Continues management of the wilderness area within the original National Monument boundary and the wilderness study areas that are awaiting Congressional action. Proposes a joint NPS/BLM wilderness/WSA management plan.

Protests regarding proposed decisions affecting BLM-administered lands must be in writing and filed with the BLM Director. Protests may raise only those issues that were submitted for the record during the planning process. 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. 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.* Please direct the follow-up letters to the appropriate address provided below. To be considered complete, your protest must contain at minimum, the following information: (1) The name, mailing address, telephone number and interest of the person filing the protest; (2) a statement of the issue or issues being protested; (3) a statement of the part or parts of the plan being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and (5) a concise statement explaining why the State Director's decision is believed to be wrong. A protest merely expressing disagreement with the State Director's proposed decision without providing any supporting data will not be considered a valid protest.

All written protests must be mailed to one of the following addresses:

Regular Mail, Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, P.O. Box 66538, Washington, DC 20035, or

Overnight Mail, Director, WO–210/LS–1075, Bureau of Land Management, Attn: Brenda Hudgens-Williams, Department of the Interior, 1610 L Street, NW., Suite 1075, Washington, DC 20036.

To be considered timely, your protest must be postmarked no later than the last day of the protest period. Though not a requirement, it is suggested that protests be sent by certified mail, return receipt requested. You are also encouraged, but not required, to forward a copy of your protest to the Monument Manager at the address listed under **FOR FURTHER INFORMATION** above. This may allow the BLM to resolve the protest through clarification of intent or discussion with the protestor.

Please note that protests, including names and street addresses, are available for public review and/or release under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. Respondents who wish to withhold their name and/or street address from public review or from disclosure under FOIA must state so prominently at the beginning of the written correspondence. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representing organizations or businesses, will be made available for public inspection in their entirety.

Following resolution of any protests of the proposed decision, a joint record of decision will be signed by the Regional Director of the Pacific West Region of the National Park Service and the State Director of the Bureau of Land Management for Idaho. A notice of availability of the record of decision will be published in the **Federal Register** and through local news media.

Dated: August 19, 2005.

K. Lynn Bennett,

Bureau of Land Management, Idaho State Director.

Dated: August 17, 2005.

Patricia L. Neubacher,

National Park Service, Acting Regional Director, Pacific West Region.

[FR Doc. 05–16950 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–3809]

Notice of Availability for the Ruby Hill Mine Expansion—East Archimedes Project Final Supplemental Environmental Impact Statement; A Proposed Expansion of Existing Gold Mining/Processing Operations in Eureka County, NV

AGENCY: Bureau of Land Management.

Cooperating Agencies: Nevada Department of Wildlife and Eureka County.

ACTION: Notice of availability for the Ruby Hill Mine Expansion—East Archimedes Final Supplemental Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Regulations found at 40 CFR 1500–1508, notice is hereby given of the availability of the Final Supplemental Environmental Impact Statement for comment, prepared by the Battle Mountain Field Office of the Bureau of Land Management (BLM). The statement analyzes the environmental effects of the Proposed Action and the No Action Alternatives.

DATES: Written comments must be post-marked or otherwise delivered by 4:30 p.m. (Pacific time zone) by no later than 30 days after the date of publication of this Notice in the **Federal Register**.

Comments, including names and addresses or respondents, will be available for public review at the above address during regular business hours, Monday–Friday, excluding holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests to withhold your name or street address from public review will be honored to the extent allowed by law. All submissions from organizations or business, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be available for public inspection in their entirety. A limited number of copies of the Final Supplemental EIS may be obtained at the Battle Mountain BLM Field Office.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, attn: Caleb Hiner, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Caleb Hiner, Battle Mountain BLM at (775) 635–4052.

SUPPLEMENTARY INFORMATION: The Proposed Action would develop the East Archimedes deposit which was defined in the original EIS (approved February 3, 1997) as a Reasonably Foreseeable Future Action. The Proposed Action would consist of an extension of the existing pit, expansion of the existing west and east waste rock disposal areas, the expansion of the existing heap leach pad, and construction of dewatering facilities. Under the Proposed Action an estimated additional 744 acres of disturbance would occur, all disturbance proposed under the expansion falls within the footprint of the project boundary as analyzed in the original EIS.

Gerald M. Smith,

Field Manager.

[FR Doc. 05–16951 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1310–00]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) and to Conduct Public Scoping for the West Tavaputs Natural Gas Full Field Development Plan, Carbon and Duchesne Counties, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent (NOI) to conduct public scoping and prepare an Environmental Impact Statement (EIS) for the West Tavaputs Natural Gas Full Field Development Plan, Carbon and Duchesne Counties, UT.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM), Price Field Office, Price, Utah, will prepare an EIS on the impacts of efficient and orderly development of the natural gas resources in the West Tavaputs Plateau area on approximately 137,700 acres of public, state, and private lands in Carbon and Duchesne Counties in eastern Utah, as well as considering a site-specific development proposal on a portion of the West Tavaputs Plateau area. The Price Field Office Manager will be the authorized officer for this project.

DATES: A public scoping period of at least 30 days will commence on the date this notice is published in the **Federal Register**. If you have any information, data or concerns related to the potential impacts of the proposed action, or have suggestions for additional alternatives, or have comments on the proposed planning amendment criteria, please submit them to the address listed below within 30 days of the date this Notice is published, or within 15 days after the last public meeting is held. Public open houses and informational meetings will be conducted during the scoping period in Price, Roosevelt, and Salt Lake City, Utah. Details on these meetings will be publicized in the respective city's newspapers at least 15 days prior to their scheduled dates.

ADDRESSES: Written scoping comments should be sent to: Field Manager, Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501, ATTN: West Tavaputs Natural Gas Full Field Development Plan. Comments, including names and street addresses of respondents will be available for public review at the BLM Price Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Fred O'Ferrall, (435) 636–3607.

SUPPLEMENTARY INFORMATION: Bill Barrett Corporation (BBC), together with some other lessees, has submitted a proposal to develop the natural gas resources on leased lands under their control in the West Tavaputs Plateau area. The BLM has determined that a comprehensive plan for full field development of the natural gas resources in the larger field area would allow more flexibility. A more comprehensive area analysis will reduce the need for redundant future analyses, since the analysis of the comprehensive plan would also evaluate the impacts of other development proposals on existing lessees in the area and the impacts of development on lands not currently under lease. The EIS will consider and analyze potential impacts of natural gas development at the levels projected by BBC or as refined during the scoping process on both leased and unleased lands in the entire West Tavaputs Plateau area. This analysis will include a site-specific evaluation of BBC's proposal under an appropriate range of alternatives, and will also consider mitigation measures as Conditions of Approval under which the development may take place.

Description of the Proposed Action

The proposed action is to consider and determine the conditions under which full field development of natural gas resources within the West Tavaputs area (an area larger than, but encompassing, BBC's ''project area'') would be approved. The BLM anticipates analyzing the proposed action and also intends to rely on this EIS to evaluate and, if appropriate, approve site-specific individual drilling applications and right-of-way authorizations, where applicants (such as, BBC) can provide sufficiently detailed information for inclusion into this process. The development plan proposal includes multiple wells, roads, access routes, production facilities, and utilities. The total number of wells ultimately drilled for field development depends on many factors, such as reservoir properties, production success, per well recovery, emergent engineering technologies, economic factors, availability of commodity markets, and lease stipulations and restrictions.

Site-Specific Project Proposal by BBC and Others

The project area identified by BBC encompassing approximately 137,700 acres, is located approximately 25 miles east of Price, Utah and 60 miles southwest of Vernal, Utah and is within Carbon and Duchesne Counties in Eastern Utah. The full field development area/EIS involves approximately 87% BLM-administered lands (119,661 acres); 8% State of Utah-administered lands (10,434 acres); and 5% private mineral land (7,605 acres). Approximately 98 percent of the BBC proposed project is located on the top of the West Tavaputs plateau. The remaining area, approximately two percent, is proposed to be located in the narrow canyon bottoms of the Nine Mile Canyon region and in portions of Jack Canyon and Desolation Canyon Wilderness Study Areas, on existing Federal leases with valid existing rights.

The long-term BBC proposal for full development (along with other operators) of their mineral leases includes drilling up to 750 new wells (Federal, state and private minerals) on a maximum of 500 surface locations over a period of 20 years or until such date as the resource base is fully developed. The number of wells drilled each year would average about 30, although peak activity in any one year might reach 70 or more wells. The BBC development proposal contemplates some year-round drilling which would require applications for one-time exceptions and/or waiver of existing lease stipulations imposed to protect seasonal range habitat for elk, mule deer and bighorn sheep.

Preliminary estimates anticipate that the amount of surface disturbance will range from two to four thousand acres out of the 137,700 acre full field development area and that the projected field life will be 40 or more years. Directional and other drilling techniques are included in BBC's proposal and will also be used, as appropriate, throughout the area to keep the number of surface locations to the minimum necessary to effectively and efficiently recover the hydrocarbon resources (BBC is proposing 750 wells from 500 surface locations in its project area, assuming 80-acre spacing for resource recovery). In addition to the

well pads, roads, gas flow lines and gathering lines, other required infrastructure would include electrical lines, water (and possible condensate) lines, water treatment, storage and disposal facilities, and gas treatment and compression facilities. Gas and any condensate would be transported via pipeline to existing and new centralized compression, treatment and sales facilities. Produced water and any gas condensates would be transported by truck or pipeline to approved sales, treatment or disposal facilities.

Purpose and Need

The purpose of the proposed development action is to extract and recover natural gas from the West Tavaputs plateau area in an efficient and orderly manner. The EIS will analyze full field development, BBC's proposed action, and reasonable alternatives at the appropriate scope (including the no action alternative as well as alternatives involving application of mitigation and/or other management protections for other resource values and programs). This is in accordance with BLM's multiple-use mandate and the goals and objectives of the President's National Energy Plan. One of the identified needs for the EIS at this time is based on the continuing increase in the United States' demand for natural gas. BBC's development proposal indicates that up to 250 million cubic feet of natural gas per day could be produced to help meet the nation's growing need for natural gas. Identified benefits that may be derived from the natural gas development also include increased royalty and tax revenue to local, State and Federal governments, as appropriate, and additional opportunities for employment and economic benefits at the local and regional level.

Alternatives

The EIS will analyze the proposed action, reasonable alternatives formulated through the scoping process, and the No Action Alternative (in which only the 38 wells presently approved under the West Tavaputs Drilling Program EA would be drilled). Some alternatives will consider and analyze mitigation and other measures to protect other resources and uses that could be imposed as Conditions of Approval under which the development may take place. At least one of the alternatives will consider the use of Best Management Practices such as: (1) Burying of flow lines for transport of water, condensate and gas to centralized facilities; (2) requiring extensive interim reclamation of production areas; (3) locating facilities and wells in visually acceptable areas and painting with colors that blend in with the natural environment; (4) minimizing the amount of surface disturbance with the use of alternative techniques, such as drilling of multiple wells from the same surface location; (5) using existing well locations and other techniques designed to reduce the footprint of new and existing oil and gas production facilities and infrastructure; and, (6) designing/constructing all new roads to a safe and appropriate standard to accommodate their intended use.

Anticipated Issues and Management Concerns

Preliminary issues identified at this time include (1) archaeological, historic and cultural features including late-19th-century structures and prehistoric rock art; (2) wildlife, including big game species (Mule Deer, Elk, etc.); (3) Threatened and Endangered species (Bald Eagle, Mexican Spotted Owl, and several endangered fish including Colorado Pikeminnow, Humpback Chub, Bonytail, and Razorback Sucker); (4) Utah BLM sensitive species such as the Greater Sage Grouse; (5) surface and subsurface watersheds/hydrology; (6) transportation and roads, such as the Nine Mile Canyon National Backcountry Byway; (7) vegetation (including the potential introduction of noxious weeds, short-term re-vegetation and restoration of disturbed areas, and long-term establishment and stabilization of perennial vegetation through recommended reclamation measures); (8) drilling from within the canyon rims and in the narrow canyon bottoms in the region; (9) the proposed Nine-Mile Canyon Area of Critical Environmental Concern (ACEC); (10) the Jack Canyon Wilderness Study Area and the Desolation Canyon Wilderness Study Area; (11) the Green River and its potential for designation under the Wild and Scenic River Act; (12) the Desolation Canyon National Historic Landmark; (13) air quality and visual clarity; (14) recreational opportunities; and (15) existing scenic quality of the landscape. Other considerations include FLPMA and NEPA in relationship to the existing Price Management Framework Plan, as amended, and the proposed Price Resource Management Plan/EIS revision. These preliminary issues are not final. Identification of additional issues and/or issue refinement through the public participation process is anticipated.

Comments should address: (1) Issues to be considered for analysis; (2) reasonable alternatives; and, (3) relevant information for consideration relating to the analysis of full field development, BBC's proposed development or its potential impacts. The EIS will consider comments and other issues/concerns raised during the scoping period in addition to those issues identified in this notice. The BLM may use the information collected during the scoping period to: (1) Develop/analyze appropriate mitigation as Conditions of Approval under which the proposed development may take place; (2) consider potential reasonable alternatives to the proposed action: or, (3) both.

Existing Development and Prior NEPA Documents in the Plan Area

Currently, there are 71 natural gas wells, with their attendant service roads and facilities, already existing within the project area. Of these 37 wells are capable of production and 34 are temporarily abandoned or plugged and abandoned. The drilling of 38 new exploration wells within the project area and the corresponding production infrastructure was previously analyzed in the West Tavaputs Drilling Program (EA) (UT–070–2004–28) and approved by a Decision Record and Finding of No Significant Impact on July 29, 2004. Construction and drilling associated with that exploration project approval is in progress. The Stone Cabin 3D Seismic Survey project (EA) (UT–070–2003–15), now completed, also provided environmental analysis of the impacts of seismic exploration activities involving some of the same lands that are now proposed for development within the project area.

Consistency With Land Use Plans, NEPA, and Potential Plan Amendments

The Price Resource Management Plan (RMP) revision/EIS is currently under development. The RMP analyzes (at the landscape level) a range of levels of use for natural gas development inclusive of the level of development as proposed by BBC, and will provide the prerequisite landscape level analysis and various resource protections. The BLM will ensure that its actions are consistent with the applicable land use plan. In the event approval of the Price RMP is unduly delayed, this EIS may alternatively serve as an amendment to the existing Management Framework Plan. Should such an amendment be necessary it will be based on the following preliminary Planning Criteria that have been identified to guide resolution of any planning issues that may arise as a result of this full field development EIS analysis: (1) The plan amendment will recognize the existence of valid existing rights; (2) lands

covered in the RMP amendment will be public lands, which include split estate lands, managed by BLM. Decisions in the RMP amendment will be made only on lands managed by BLM; (3) the BLM will use a collaborative and multi-jurisdictional approach, where possible, to jointly determine the desired future condition of public lands; (4) the BLM will make all possible attempts to ensure that its management prescriptions and amended planning actions are as complimentary as possible to other planning jurisdictions, within the boundaries described by law and policy; (5) the BLM will consider the management prescriptions on adjoining lands to minimize inconsistent management. To the extent possible, BLM will coordinate inventories, planning, and management programs with other Federal, state, tribal, and local governments and agencies; (6) management prescriptions will focus on the relative values of resources and not necessarily the combination of uses that will give the greatest economic return or economic output; (7) to the extent possible, the BLM will use current scientific information, research, new technologies and the results of resource assessments, monitoring and coordination to determine appropriate local and regional management strategies that will enhance or recover impaired ecosystems; and (8) the plan amendment will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders and management policies of the BLM.

Site-Specific NEPA

While this EIS is intended to analyze site-specific impacts, site-specific NEPA analysis and documentation must remain adequate and detailed enough to identify and support any Conditions of Approval or other adaptive management actions justified by future site-specific considerations. This is necessary so as to retain BLM's full authority at each decision stage to manage its lands in accordance with land use plans, prevent unacceptable impacts, and to support appropriate levels of protection and/or mitigation against effects on other resource values. Accordingly, additional site-specific NEPA analysis may be required before individual activities are approved based on a review of the specific conditions and the adequacy of the existing NEPA documentation at the time activities are proposed.

Patrick Gubbins,

Price Field Manager.

[FR Doc. 05–16953 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1610–DR; HAG 05–0050]

Notice of Availability of Records of Decision for the Andrews Management Unit and Steens Mountain Cooperative Management and Protection Area Resource Management Plans (RMPs)/ Environmental Impact Statement (EIS) and the Steens Mountain Wilderness and Wild and Scenic Rivers Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act), and Bureau of Land Management (BLM) policies, the BLM announces the availability of the RMPs/RODs for the Andrews Management Unit (AMU) and Steens Mountain Cooperative Management and Protection Area (CMPA), located primarily in Harney County in southeastern Oregon. The Oregon/Washington State Director approved the RMPs/RODs, which become effective immediately. In accordance with the Steens Act, BLM is also releasing the Final Steens Mountain Wilderness and WSRs Plan for pertinent lands within the CMPA.

ADDRESSES: Copies of the AMU and CMPA RMPs/RODs are available upon request from the BLM Burns District Office, 28910 Highway 20 West, Hines, OR 97738, via e-mail at *OR_Burns_RMP@or.blm.gov*, or via the Internet at *http://www.or.blm.gov/Burns/Planning/AndrewsSteensRMP/RMP.htm.*

FOR FURTHER INFORMATION CONTACT: Information about the plans may be obtained by contacting the RMP Project Leader, Gary Foulkes, BLM, Burns District Office, 29810 Highway 20 West, Hines, OR 97738, telephone (541–573–4400), fax (541–573–4411), or e-mail (*gfoulkes@or.blm.gov*).

SUPPLEMENTARY INFORMATION: The AMU and CMPA RMPs/RODs were developed with broad public participation over a three-year collaborative planning process. These RMPs/RODs address management on approximately 1,649,470 acres of public land consisting of the 1,221,314-acre AMU (public land in the Andrews Resource Area outside the CMPA) and public land in the 428,156-acre CMPA. In addition, 53,436 acres of the Three Rivers Resource Area falling within the CMPA were also included in this planning effort, and the Three Rivers RMP is amended as a result. The AMU and CMPA RMPs/RODs are designed to achieve or maintain desired future conditions determined through the planning process. The RMPs include a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, livestock grazing and recreation, wilderness, and WSRs, as well as other resources. The Steens Mountain Wilderness and WSRs Plan addresses management issues associated with the 170,084-acre wilderness area and the 105 miles of WSRs in the CMPA.

Management activities in the approved AMU and CMPA RMPs/RODs are essentially the same as those described in Alternative D for each area in the AMU/CMPA Proposed RMP/Final EIS, which was published in August 2004. BLM received five protests on the Proposed RMP/Final EIS and three comment letters on the Steens Mountain Wilderness and WSRs Plan. The protests were resolved without changes to the RMPs. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS. As a result, except for separating the text for the two plans, only minor editorial modifications were made in the RMPs/RODs. These modifications corrected errors that were noted during review of the Proposed RMP/Final EIS and provide further clarification for some of the decisions. The Comments received on the Steens Mountain Wilderness and WSRs Plan were considered during development of the Final Steens Mountain Wilderness and WSRs Plan.

James G. Kenna,

Associate State Director, Oregon/Washington.

[FR Doc. 05–16949 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–05–0777XX]

Notice of Public Meeting: Sierra Front-Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Combined resource advisory council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Resource Advisory Council meeting will be held as indicated below.

DATES: The three councils will meet on Thursday, October 20 from 8 a.m. to 5 p.m. and Friday, October 21, from 8 a.m. to 2 p.m., at the Elko Convention Center, 700 Moren Way, Elko, Nevada 89801.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, Chief, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 861–6586; or Debra Kolkman at telephone (775) 289–1946.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. Agenda topics include a presentation and discussion of accomplishments during 2005 and the outlook for 2006 for the BLM in Nevada; opening remarks and closeout reports of the three Resource Advisory Councils (RACs); breakout meetings of each group category; breakout meetings of the three RACs; setting of schedules for meetings of the individual RACs for the coming year, and other issues members of the Councils may raise. A detailed agenda will be available at *http://www.nv.blm.gov* or by calling (775) 289–1946, after October 16, 2005. All meetings are open to the public. The public may present written comments to the three RAC groups or the individual RACs. The public comment period for the Council meeting will be at 3 p.m. on Thursday, October 20. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kolkman at the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, telephone (775) 289–1946.

Dated: August 22, 2005.

Amy L. Lueders,

Acting State Director, Nevada.

[FR Doc. 05–16987 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–5870–EU; N–75370, N–75371]

Competitive Sale of Public Land and Partial Termination of Recreation and Public Purposes Act Classifications in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is identifying for sale public land encompassing 206.25 acres more or less in North Douglas County, NV, in accordance with competitive bidding procedures. The BLM is also terminating Recreation and Public Purpose Act classifications on this same land.

DATES: Comments must be submitted by October 11, 2005. Sealed bids must be received by BLM not later than 3 p.m. (PDT) October 20, 2005. The oral auction will be held at 10 a.m. (PDT) on October 27, 2005, with registration beginning at 9:30 a.m. (PDT).

ADDRESSES: Comments regarding this competitive sale should be addressed to Donald T. Hicks, Manager, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89706. Sealed bids are to be sent following the instructions given later in this announcement to 5665 Morgan Mill Road, Carson City, NV 89706. The oral auction will be held at the Douglas County Administration Building, 1616 8th Street, Minden, Nevada 89423.

FOR FURTHER INFORMATION CONTACT: An Auction and Sealed Bid Terms and Conditions package containing complete instructions, sealed bid form, documents, maps, and other information on the land can be obtained by: (1) Calling the Public Land Sales Hotline at (775) 885–6111; (2) visiting the public reception desk at the Carson City Field Office from 7:30 a.m. to 4:30 p.m. Monday through Friday (except Federal Holidays), or (3) visiting the Web site at *http://www.nv.blm.gov/carson/lands_realty/landsales.htm.*

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the public lands described below are classified for disposal by sale. These public lands have been examined and found suitable for disposal by competitive sale pursuant to Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719, respectively) and its implementing regulations, 43 Code of Federal Regulations (CFR) parts 2710 and 2720 at not less than the appraised Fair Market Value (FMV) of each parcel, as determined by the authorized officer after appraisal. The land is identified for disposal in the Carson City Consolidated Resource Management Plan and the North Douglas Specific Area Plan Amendment. Proceeds from the sale will be deposited in the Federal Land Disposal Account for Nevada established in accordance with Section 206(a) of the Federal Land Transaction Facilitation Act of 2000, Pub. L. 106–248. Upon publication of this Notice the land described is hereby segregated from appropriation under the public land laws, including the mining laws, but not from disposal by sale under the above cited statutes, for 270 days from publication of this Notice in the **Federal Register**, or until title transfer is completed, whichever occurs first. On April 16, 2002, this land was segregated from appropriation under the public land laws to consider an exchange proposal. This exchange segregation is hereby terminated and is replaced by the sale segregation in this Notice once published. Previous classifications for Recreation and Public Purposes under case numbers N–3742, N–3743 and N–12656, as they affect the described land, are no longer appropriate and are hereby terminated. In addition, the subject land is relieved of the segregative effect of those classifications.

Land Identified for Sale

Mount Diablo Meridian

T. 14 N., R. 20 E.

Parcel N–75370

sec. 5, NW¼SW¼NE¼SW¼, S½SW¼NE¼SW¼, SE¼NW¼SW¼, SE¼SW¼NW¼SW¼, N½SW¼SW¼, NE¼SW¼SW¼SW¼, N½NW¼SW¼SW¼SW¼, E½SE¼SW¼SW¼, NW¼SE¼SW¼SW¼, E½SW¼SE¼SW¼SW¼, W½NW¼SE¼SW¼ and W½SW¼SE¼SW¼.

sec. 6, N½NE¼SE¼SE¼SE¼ and NW¼SE¼SE¼SE¼.

sec. 8, NE¼NW¼.

Comprising 106.25 acres, more or less.

Parcel N–75371

sec. 5, E½E½ of Lot 1 of NW¼, NW¼NW¼E½ of lot 1 of NW¼, S½NW¼E½ of lot 1 of NW¼, SW¼E½ of Lot 1 of NW¼, E½W½ of lot 1 of NW¼, E½NE¼SW¼, NW¼NE¼SW¼, NE¼SW¼NE¼SW¼, and NE¼NW¼SW¼.

Comprising 100 acres more or less.

Terms and Conditions

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being identified for sale have no known mineral value. A sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the mineral interests. Competitive sale of the land will be conducted by sealed bid and oral auction. The parcels will not be sold for less than their FMV. The FMV is $6,400,000 for N–75370 and $10,000,000 for N–75371. Each sealed bid shall be accompanied by money order, certified check, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than 20 percent of the bid amount. The official sealed bid form to be used is included in the Auction and Sealed Bid Terms and Conditions package. The highest qualified sealed bid received by BLM for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer. Bidders are to enclose their bid form and deposit in a regular size 10 white business envelope. Envelopes are to be addressed to the Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89706. All bidders are to print their name and return address in the upper left-hand corner of the envelope, and write the BLM Serial Number (either N–75370 and/or N–75371) for the parcel(s) for which they are bidding in the lower front left-hand corner of the envelope. If you are bidding on both parcels, you must submit a separate check for each property. Sealed bids may be mailed, hand delivered, or placed with an overnight delivery carrier. The oral auction begins at 10 a.m., PDT, October 27, 2005, at the Douglas County Administration Building, 1616 8th Street, Minden, Nevada 89423. Registration for oral bidding will begin at 9:30 a.m., PDT, the day of sale.

Prior to receiving a bidder number on the day of the sale, individuals must present a valid State Driver's License or valid Photo Identification Card, and a money order, certified check, bank draft, or cashier's check made payable to the Bureau of Land Management in the amount of $10,000.

The highest qualifying bid, whether by sealed or oral bid, will be declared the high bid. If the apparent high bidder is by oral auction the bidder must submit a $10,000 check at the auction site. The remainder of the 20 percent of the amount bid must be submitted to BLM at the Carson City Field Office not later than 3 p.m. (PDT) on the date of the sale in the form of a money order, certified check, bank draft, or cashier's check made payable to the Bureau of Land Management. The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date in the form of a money order, certified check, bank draft, cashier's check or by Electronic Funds Transfer. Failure to submit sufficient funds for the bid deposit or failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. The BLM may not issue a patent or deed to a person other than the declared successful bidder and qualified conveyee or patentee in a disposal action. An appraisal report has been prepared by a certified appraiser to establish the FMV of the parcels. In order to determine the FMV of the subject public land through appraisal, certain assumptions have been made of the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the land identified for sale, and conveyance of the subject land will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject land. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the land will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals will be the responsibility of the buyer.

Detailed information concerning the property, including encumbrances, reservations, planning and environmental documents, is available for review at the Bureau of Land Management, Carson City Office, 5665 Morgan Mill Road, Carson City, NV 89701 by calling (775) 885–6115. For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments. Any comments are to be in letter format citing specific reasons for your objection and are to be addressed and mailed to Donald T. Hicks, Manager, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. Facsimiles, telephone calls, and e-mails are unacceptable means of notification. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Bureau of Land Management. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentator's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentator's request to have his or her name and/or address withheld from public release will be honored to the extent permissible by law.

Sealed bids may not be submitted for the above-described lands until at least October 25, 2005. Patent (title document) will be issued with a reservation for a right-of-way for ditches and canals constructed by the authority of the United States under the Act of

August 30, 1890 (43 U.S.C. 945) and will be subject to valid existing rights and the following encumbrances of record:

Parcel N–75370

(1) Those rights for buried communication purposes which have been granted to Verizon California, Inc. by Right-of-Way N–353 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

(2) Those rights for buried communication purposes which have been granted to Verizon California, Inc. by Right-of-Way N–31119 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(3) Those rights for buried communication purposes which have been granted to Verizon California, Inc. by Right-of-Way N–32152 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(4) Those rights for access purposes which have been granted to Ranchos Community Church by Right-of-Way N–39139 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(5) Those rights for access road, water, and sewer purposes and as amended to include road improvements, and additional buried utility lines and related structures along North Sunridge Drive, which have been granted to Douglas County by Right-of-Way N–56768 by the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761),

(6) Those rights for natural gas pipeline purposes which have been granted to Southwest Gas Corporation by Right-of-Way N–58973 pursuant to Section 28 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185).

(7) Those rights for emergency access road purposes which have been granted to Douglas County by Right-of-Way N–59346 by the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(8) Those rights for natural gas pipeline purposes which have been granted to Southwest Gas Corporation by Right-of-Way N–59816 pursuant to Section 28 of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185).

(9) Those rights for water and sewer purposes which have been granted to Douglas County by Right-of-Way N–74267 by the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(10) Those rights for buried 612 volt electrical vault and buried 25kV distribution line which have been granted to Sierra Pacific Power Company by Right-of-Way N–76532 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(11) Those rights to Douglas County for realignment of Topsy Lane, improvement of Center Drive, access to the sewer line, a domestic water well and water main, detention basin, sanitary sewer line and lift station, water lines and other buried utility lines (excluding gas) by Right-of-Way N–78552 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Parcel N–75371

(1) Those rights for buried communication purposes which have been granted to Verizon California, Inc. by Right-of-Way N–353 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

(2) Those rights for electric line purposes which have been granted to Sierra Pacific Power Company by Right-of-Way N–7836 under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

(3) Those rights for a buried natural gas pipeline which have been granted to Piaute Pipeline Company by Right-of-Way N–17001 under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185).

(4) Those rights for buried communication purposes which have been granted to Verizon California, Inc. by Right-of-Way N–31119 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(5) Those rights for buried communication purposes which have been granted to Verizon California, Inc. by Right-of-Way N–32152 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

(6) Those rights to Douglas County for realignment of Topsy Lane, improvement of Center Drive, access to the sewer line, a domestic water well and water main, detention basin, sanitary sewer line and lift station, water lines and other buried utility lines (excluding gas) by Right-of-Way N–78552 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts or omissions of the patentee or its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the patentee's use occupancy, or operations on the patented real property which have already resulted or hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and state environmental laws, are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Dated: July 12, 2005.

Donald T. Hicks,

Manager, Carson City Field Office.

[FR Doc. 05–16870 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–05–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION: The Gila and Salt River Meridian, Arizona:

The plat representing a metes-and-bounds survey in section 36, Township 15 North, Range 5 East, accepted August 8, 2005, and officially filed August 18, 2005, for Group 917 Arizona.

This plat was prepared at the request of the National Park Service.

The plat representing the dependent resurvey of a portion of the south and west boundaries and a portions of the

subdivision lines, The subdivision of section 31 and a metes-and-bounds surveys in section 31, Township 15 North, Range 6 East, accepted August 8, 2005, and officially filed August 18, 2005, for Group 917 Arizona.

This plat was prepared at the request of the National Park Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 28, Townships 29 North, Range 9 East, accepted August 8, 2005, and officially filed August 18, 2005 for Group 942 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the survey of a portion of the east boundary, and a portion of the subdivisional lines, Township 30 North, Range 11 East, accepted June 7, 2005, and officially filed June 16, 2005 for Group 906 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Region Office.

The plat (3 sheets) representing the dependent resurvey of the north boundary, and the survey of a portion of the south and north boundaries and a portion of the subdivisional lines, Township 31 North, Range 12 East, accepted June 7, 2005, and officially filed June 16, 2005 for Group 909 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Region Office.

The plat representing the dependent resurvey of the south, east, west and north boundaries, and the subdivisional lines, Township 31 North, Range 14 East, accepted June 16, 2005, and officially filed June 23, 2005 for Group 936 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Region Office and Hopi.

The plat (2 sheets) representing the dependent resurvey of the south, east, west and north boundaries and the subdivisional lines, and the subdivision of sections 10, 18 and 30 and the metes-and-bounds survey of tract 37, Township 23 North, Range 19 East, accepted July 20, 2005 and officially filed July 28, 2005 for Group 927 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the south and north boundaries and the subdivisional lines, Township 27 North, Range 24 East, accepted July 19, 2005, and officially filed July 28, 2005, for Group 924 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the south, east, west and north boundaries, and the subdivisional lines, Township 23 North, Range 26 East, accepted May 13, 2005, and officially filed May 19, 2005 for Group 886 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the east and west boundaries, and the subdivisional lines, Township 24 North, Range 26 East, accepted June 2, 2005, and officially filed June 14, 2005 for Group 886 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the south, east and north boundaries, Township 23 North, Range 27 East, accepted June 22, 2005, and officially filed June 30, 2005 for Group 886 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the east boundary, the sectional correction line and subdivisional lines, Township 24 North, Range 27 East, accepted June 27, 2005, and officially filed July 7, 2005 for Group 886 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the seventh standard parallel north (south boundary), the east and north boundaries, and the subdivisional lines of Township 29 North, Range 27 East, accepted June 2, 2005, and officially filed June 14, 2005 for Group 902 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the portion of the west and north boundaries, Township 22 North, Range 28 East, accepted June 2, 2005 and officially filed June 14, 2005 for Group 886 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the Arizona-New Mexico State Line between the witness corner to mile post 120 and mile post 127 and a portion of the fifth standard parallel north (south boundary) and the west and north boundaries and the subdivisional lines and the subdivision of certain sections, Township 21 North, Range 31 East, accepted July 27, 2005, and officially filed August 4, 2005 for Group 899 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (4 sheets) representing the dependent resurvey of the south and west boundaries, subdivisional lines and a portion of the subdivision of section 33, and the subdivision of sections 19, 28 and 32, and a metes-and-bounds survey in sections 33 and 34, Township 23 North, Range 31 East, accepted June 2, 2005, and officially filed June 14, 2005 for Group 880 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (4 sheets) representing the dependent resurvey of a portion of the west and north boundaries and a portion of the subdivisional lines and the metes-and-bounds survey of the Beaver Dam Mountains wilderness area boundary through sections 5, 6 and 7, Township 41 North, Range 14 West, accepted June 30, 2005, and officially filed July 8, 2005 for Group 879 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivision lines, and a metes-and-bounds survey in section 28, Township 21 North, Range 21 West, accepted June 7, 2005, and officially filed June 16, 2005, for Group 953 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (2 sheets) representing a dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 10 and 11 and the metes-and-bounds surveys in sections 10 and 11, Township 13 South, Range 12 East, accepted July 27, 2005, and officially filed August 8, 2005, for Group 918 Arizona.

This plat was prepared at the request of the National Park Service.

The plat (9 sheets) representing the dependent resurvey of the first standard parallel south, through a portion of Range 18 East (North Boundary) and a portion of the subdivisional lines, the dubdivision of sections 3, 14, 17, 20, 29, and 33, and the metes-and-bounds survey of the Aravaipa Canyon wilderness area boundary, Township 6 South, Range 18 East, accepted July 11, 2005, and officially filed July 21, 2005 for Group 860 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of LandManagement, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, PO Box 1552, Phoenix, Arizona, 85001–1552.

Dated: August 18, 2005.

Stephen K. Hansen,

Acting Cadastral Chief.

[FR Doc. 05–16976 Filed 8–25–05; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 22, 2005, a proposed Consent Decree in *United States* v. *City and County of Denver, et al*, Civil Action No. 02–cv–1341–EWN–MJW was lodged with the United States District Court for the District of Colorado.

In this action the United States sought to recover costs incurred in responding to the release or threatened release of hazardous substances into the environment from the Lowry Landfill Superfund Site, located in Arapahoe County, Colorado, near Denver. The Consent Decree provides for the recovery of future response costs, and $13.9 million in past response costs, incurred by the United States. The Consent Decree also requires that the defendants perform the cleanup work as set forth in the Consent Decree. In exchange for payment, completion of the outlined work and a waiver of claims against the United States, the defendants will receive contribution protection and a release from liability with respect to the Site, subject to certain limitations and conditions. In addition, in exchange for a release of claims against the United States or indemnification by certain defendants, other entities identified in Appendixes F and G of the Consent Decree will receive contribution protection and a release from liability with respect to past response costs, subject to certain limitations and conditions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City and County of Denver, et al.*, D.J. Ref. 90–11–2–93/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 1225 17th Street, Suite 700, Denver, Colorado, and at the U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Denver, Colorado. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site. *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $205.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $25.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–16964 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on August 2, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since April 29, 2005, AMSE has revised, added, or deleted several consensus committee charters; and has published several new standards, all within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on May 9, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 2005 (70 FR 30485).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–16962 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International—Standards

Notice is hereby given that, on August 4, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ASTM International—Standards (''ASTM'') has filed written notification simulatanously

with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purposes of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating after April 1, 2005, designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on April 12, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2005 (70 FR 25110).

For additional information, please contact: Thomas B. O'Brien, Jr., General Counsel, at ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, telephone 610–832–9597, e-mail address *tobrien@astm.org.*

Dorothy Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–16960 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Research and Development Program for the Advancement of In Situ Bioremediation Technologies

Notice is hereby given that, on August 1, 2005, pursuant section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Joint Research and Development Program for the Advancement of In Situ Bioremediation Technologies (''Bioremediation Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Honeywell International Inc., Phoenix, AZ has been added as a party to this venture. Also, W.S. Atkins Consultants Ltd., Epsom, United Kingdom has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Bioremediation Consortium intends to file additional written notification disclosing all changes in membership.

On March 11, 2005, Bioremediation Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 19, 2005 (70 FR 20400).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–16957 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on August 1, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Stanford University, Stanford, CA; University of Maryland University College, Adelphi, MD; and ANGEL Learning, Indianapolis, IN have been added as parties to this venture.

Also, Carnegie Mellon University, Pittsburgh, PA; Oracle Corporation, Redwood Shores, CA; Saba Software, Inc., Redwood Shores, CA; IVIMEDS Limited, Dundee, Scotland, United Kingdom; SumTotal Systems, Inc., Bellevue, WA; and Thinq, Baltimore, MD have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on May 9, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 3, 2005 (70 FR 32653).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–16958 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on August 5, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SAP Labs, Inc., Washington, DC; INDRA Sistemas, S.A., Madrid, Spain; BearingPoint, Inc., McLean, VA; Systematic Software Engineering A/S, Aarhus, Denmark; The Aerospace Corporation, El Segundo, CA; Objective Interface Systems, Inc., Herndon, VA; Crystal Group, Inc., Hiawatha, IA; Anteon Corporation, Fairfax, VA; University of Maryland, Center for Satellite & Hybrid Communication Networks, College Park, MD; and Systems Integration & Development, Inc., Rockville, MD have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry

Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on May 11, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 2005 (70 FR 34150).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–16961 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Storage Bridge Bay Working Group, Inc.

Notice is hereby given that, on August 9, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), Storage Bridge Bay Working Group, Inc. (''SBB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the Standards development organization is: Storage Bridge Bay Working Group, Inc., Redwood City, CA. The nature and scope of SBB's standards development activities are: Promoting the computer industry by supporting and facilitating the development of interoperable and compatible storage components with reference to controller slot compatibility between and among storage solutions. These purposes include the objective of developing and publishing a ''storage bridge bay'' specification that will serve as a reference and guideline for defining physical, mechanical, electrical and low-level enclosure management requirements for an enclosure controller slot that will support a variety of storage controllers from a variety of independent hardware vendors and independent software vendors. Any storage controller design based on this specification shall be able to fit, connect, and operate within any storage enclosure controller slot design based on the same specification.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–16959 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–271N]

Clarification of Existing Requirements Under the Controlled Substances Act for Prescribing Schedule II Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Clarification.

SUMMARY: On January 18, 2005, DEA published in the **Federal Register** a solicitation of comments on the subject of dispensing controlled substances for the treatment of pain. Many of the comments that the agency received indicate that there is a need to issue a clarification regarding certain aspects of the prescription requirements for schedule II controlled substances. This document provides such clarification.

DATES: August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION: On January 18, 2005, the Drug Enforcement Administration (DEA) published in the **Federal Register** a Solicitation of Comments on the subject of dispensing controlled substances for the treatment of pain. 70 FR 2883. Most of the comments that the agency received sought clarification on the legal requirements governing the prescribing of schedule II controlled substances by physicians in view of DEA's November 16, 2004, Interim Policy Statement. 69 FR 67170. Given these comments, DEA wishes to reiterate the following principles under the Controlled Substances Act (CSA) and DEA regulations.

1. As the Interim Policy Statement states, ''For a physician to prepare multiple prescriptions [for a schedule II controlled substance] on the same day with instructions to fill on different dates is tantamount to writing a prescription authorizing refills of a schedule II controlled substance.'' To do so conflicts with the provision of the CSA which provides: ''No prescription for a controlled substance in schedule II may be refilled.''

2. Many of the comments that DEA received were from patients who said they have been receiving prescriptions for schedule II controlled substances for several years (for example, for the treatment of severe pain or attention deficit hyperactivity disorder) and have gotten into a routine of seeing their physician once every three months. Many such commenters were under the mistaken impression that, because of the Interim Policy Statement, they now must begin seeing their physician every month. DEA wishes to make clear that the Interim Policy did *not* state that such patients must visit their physician's office every month to pick up a new prescription. There is no such requirement in the CSA or DEA regulations. What is required, in each instance where a physician issues a prescription for any controlled substance, is that the physician properly determine there is a legitimate medical purpose for the patient to be prescribed that controlled substance and that the physician be acting in the usual course of professional practice. 21 CFR 1306.04(a); *United States* v. *Moore,* 423 U.S. 122 (1975).

At the same time, schedule II controlled substances, by definition, have the highest potential for abuse, and are the most likely to cause dependence, of all the controlled substances that have an approved medical use. 21 U.S.C. 812(b). Physicians must, therefore, use the utmost care in determining whether their patients for whom they are prescribing schedule II controlled substances should be seen in person each time a prescription is issued or whether seeing the patient in person at somewhat less frequent intervals is consistent with sound medical practice and appropriate safeguards against diversion and misuse. Physicians must also abide by any requirements imposed by their state medical boards with respect to proper prescribing practices and what constitutes a bona fide physician-patient relationship. 21 U.S.C. 823(f)(1), (4).

3. Under the circumstances described in paragraph 2, in those instances where the physician (who regularly sees a patient) issues a prescription for a

schedule II controlled substance for a legitimate medical purpose without seeing the patient in person, the physician may mail the prescription to the patient or pharmacy. In addition, as the DEA regulations state: ''A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted [elsewhere in this section of the regulations].'' 21 CFR 1306.11(a). Thus, as this provision of the regulations provides, faxing may be used to facilitate the filling of a schedule II prescription, but only if the pharmacy receives the original written, signed prescription prior to dispensing the drug to the patient.

4. The CSA and DEA regulations contain no specific limit on the number of days worth of a schedule II controlled substance that a physician may authorize per prescription. Some states, however, do impose specific limits on the amount of a schedule II controlled substance that may be prescribed. Any limitations imposed by state law apply in addition to the corresponding requirements under Federal law, so long as the state requirements do not conflict with or contravene the Federal requirements. 21 U.S.C. 903. Again, the essential requirement under Federal law is that the prescription for a controlled substance be issued for a legitimate medical purpose in the usual course of professional practice. In addition, physicians and pharmacies have a duty as DEA registrants to ensure that their prescribing and dispensing of controlled substances occur in a manner consistent with effective controls against diversion and misuse, taking into account the nature of the drug being prescribed. 21 U.S.C. 823(f).

Finally, as stated in the Solicitation of Comments, once DEA has completed its review of the comments, the agency plans to issue a new **Federal Register** document, which will provide a recitation of the pertinent legal principles relating to the dispensing of controlled substances for the treatment of pain.

Dated: August 19, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–16954 Filed 8–25–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,428]

Americal Corporation, Henderson, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 22, 2005 in response to a petition filed by a company official on behalf of workers at Americal Corporation, Henderson, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 29th day of July, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4678 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,639 and TA-W–57,639A]

Bernhardt Furniture Company, Plant # 9, Shelby, NC, and Bernhardt Furniture Company, Plant # 14, Cherryville, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 2005 in response to a petition filed by a company official on behalf of workers at Bernhardt Furniture Company, Plant #9, Shelby, North Carolina (TA–W–57,639) and Bernhardt Furniture Company, Plant #14, Cherryville, North Carolina (TA–W–57,639A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 10th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4683 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,114]

Bourns Microelectronics Modules, Inc., a Subsidiary of Bourns Inc., New Berlin, WI; Notice of Revised Determination on Remand

On June 29, 2005, the United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand in *Former Employees of Bourns Microelectronics Modules, Inc.* v. *U.S. Secretary of Labor* (Court No. 045–00350).

A petition, dated November 30, 2004, for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) was filed on behalf of workers and former workers of MMC Bidding, Inc., Division of Bourns, New Berlin, Wisconsin. The investigation revealed that the workers previously worked for Microelectronics Modules Corporation (MMC), New Berlin, Wisconsin and that the workers' employment with MMC was terminated when Bourns acquired the assets of MMC on October 30, 2003. The investigation also revealed that the Department granted a certification for the former workers of MMC (TA–W–42,217; expired December 6, 2004).

On December 27, 2004, the investigation for the case at hand was terminated because it was believed that the workers were covered by the previous certification for MMC (TA–W–42,217). (The Department had also terminated another investigation for a previous petition for the same location (TA–W–54,790) on June 4, 2004 because the Department found that the workers were covered by the certification for MMC (TA–W–42,217)). The Department's Notice of Termination of Investigation for this case was published in the **Federal Register** (70 FR 3732).

By letter dated January 14, 2005, the petitioner requested administrative reconsideration, stating that the workers were hired by and then separated from Bourns, that the petitioner helped ship machines and documentation to, and provided training to persons in Costa Rica, China and Taiwan, and that parts were being imported to satisfy customers' demands.

By letter dated March 10, 2005, the petitioner's request for reconsideration was dismissed based on the finding that no new facts of a substantive nature which would bear importantly on the Department's determination was provided by the petitioner. On March 11, 2005, the Dismissal of Application

for Reconsideration was issued. The Department's Notice of Dismissal was published in the **Federal Register** on March 22, 2005 (70 FR 14483).

On May 3, 2005, the petitioner filed an appeal with the USCIT. In the appeal, the petitioner suggested that the workers were engaged in production during their employment with Bourns and alleged that they were separated from Bourns in May 2004 when the facility closed due to the shift of production to China, Taiwan and Costa Rica.

In its June 29, 2005 Order, the USCIT granted the Department's motion for a voluntary remand for further investigation and directed the Department to determine whether the subject worker group met the criteria set forth in the Trade Act of 1974 for TAA and ATAA certification.

During the remand investigation, the Department contacted a Bourns official to ascertain whether the workers were employees of Bourns Microelectronics Modules, Inc., (BMMI), whether the workers were engaged in production of computer modules during their employment with BMMI and if so, whether computer module production shifted abroad, and whether there were increased imports of computer modules during the relevant period.

The remand investigation revealed that the subject company did not acquire the subject facility until December 3, 2003 and that the subject workers were separated from BMMI, a subsidiary of Bourns, Inc., when the subject company shifted a meaningful portion of computer module production from the subject facility to Costa Rica.

Under Section 113 of the Trade Adjustment Assistance Reform Act of 2002 (PL 107–210), workers may be eligible to apply for TAA services if they were laid off as a result of increased imports or if their companies shifted production out of the United States to certain foreign countries. Workers laid off as a result of a shift in production to a country that is party to a free trade agreement with the United States, or a country that is named as a beneficiary under the Andean Trade Preference Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, may satisfy TAA certification criteria. Since Costa Rica is a named beneficiary under the Caribbean Basin Economic Recovery Act, the shift of computer module production from the subject facility to Costa Rica satisfies the criteria for TAA certification.

A careful review of the record revealed that all criteria regarding ATAA for the subject worker group have been met. A significant number or proportion of the worker group are age fifty years or over, the workers possess skills that are not easily transferable and competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the remand investigation, I conclude that there was a shift in production from the workers' firm or subdivision to Costa Rica of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Bourns Microelectronics Modules, Inc., A Subsidiary of Bourns, Inc., New Berlin, Wisconsin, who became totally or partially separated from employment on or after December 3, 2003, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4670 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of July 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,381; Brodsky's Uniform and Equipment, Tacoma, WA

TA–W–57,373; Teradyne, Teradyne Semiconductor Test Div., Central Boston, MA

TA–W–57,392; Apex Texicon, Inc., Bangor, PA

TA–W–57,471; Rohm and Haas Chemicals, LLC, Power Coatings Div., Wytheville, VA

TA–W–57,505; The Eckadams Company, Osceola, AR

TA–W–57,408; Advanced Electronics, Inc., Boston, MA

TA–W–57,488; Plastic Oddities, Inc., Shelby, NC

TA–W–57,403; Alfa Laval, Inc., Fluid Handling Operation, Pleasant Prairie, WI

TA–W–57,417; Unaxis Optics USA, Inc., a subsidiary of Unaxis, including on-site production workers from Excell Personnel and Express Personnel, Golden, CO

TA–W–57,469 & A; NABCO, Inc., a subsidiary of Remy International, Kaleva, MI and Marion, MI

TA–W–57,113; Vander-Bend Manufacturing, LLC, Sunnyvale, CA

TA–W–57,259; Omni Integrated Technologies, Inc., Fairfield, OH

TA–W–57,364; Akro-Mills, div. of Myers Industries, Inc., Akron, OH

TA–W–56,468; Milwaukee Electric Tool Corp., Brookfield Plant, Brookfield, WI

TA–W–57,171; Focus: Hope, Manufacturing Div., Detroit, MI

TA–W–57,269; Temple Inland, Antioch Div., Antioch, CA

TA–W–57,363; Rhoda Lee, Inc., New York, NY

TA–W–57,271; Cerro Flow Products, Inc., Sauget, IL

TA–W–57,228; St. John Knits, Inc., a div. of St. John Knits International, Inc., San Ysidro, CA

TA–W–57,336 & A; United Machine Works, Inc., Bethel, NC and Greenville, NC

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–57,541; Firestone Tube Co., a subsidiary of Bridgestone/Firestone North American Tire LLC, Russellville, AR

TA–W–57,420; Honeywell Commercial Electronic Systems, a div. of Honeywell International, Glendale, AZ

TA–W–57,426; Mercury Marine Plant 7, Outboard Business Unit, including on-site leased workers of Westaff, St. Cloud, FL

TA–W–57,411; Lexington Home Brands, a subsidiary of Lexington Furniture Industries, Plant 15, Lexington, NC

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–57,498; Custom Machine Works, Inc., Fayetville, AR

TA–W–57,454; Glenayre Electronics, Duluth, GA

TA–W–57,526; Bard na nGleann International, a subsidiary of Ballingeary Co., San Jose, CA

TA–W–57,461; Elkin Printing, Inc., Ronda, NC

TA–W–57,442; Menlo Worldwide, Salem NH

TA–W–57,444; Whaling Industries, Inc., New York, NY

TA–W–57,532; Roller Derby Skate Corp., Atglen, PA

TA–W–57,532A; California Advanced Sports, La Mirada, CA

TA–W–57,532B; 360, Inc., La Mirada, CA

TA–W–57,470; Wilson Sporting Goods Co., Golf Div., a div. of Amer of Finland, Humboldt, TN

TA–W–57,430; Springs Industries, Inc., Creative Products Group, Rock Hill, SC

TA–W–57,379; Cerro Metal Products Co., a div. of The Marmon Group, Bellefonte, PA

TA–W–57,321; Reum Corp., a div. of Reum Group, Waukegan, IL

TA–W–57,446; Hercules, Inc., Aqualon Div., Parlin, NJ

TA–W–57,457; TRW Automotive, Occupant Safety Systems Div., Cookeville, TN

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–57,357 & A; Hewlett-Packard Co., 300 E 6th Street Facility, Cincinnati, OH and 11515 Grooms Road Facility, Cincinnati, OH

TA–W–57,341; Haggar Clothing Co., a div. of Haggar Corp., Sourcing Div., Weslaco Materials Warehouse, Weslaco, TX

TA–W–57,362; Sony Electronics, Inc., Solutions Engineering—Test Group, San Jose, CA

TA–W–57,512; us Airways, Inc., Myrtle Beach, SC

TA–W–57,489; APAC Customer Services of Illinois, Inc., a div. of APAC Customer Services, Inc., Canton, IL

TA–W–57,418; The Scotts Co., Global Business Information Services Department, Operations and Networking Function, Marysville, OH

TA–W–57,391; Nortel Networks, Convergence Multimedia Services, Raleigh, NC

TA–W–57,521; International Paper Co., Printing and Communications Papers Customer Service Div., Memphis, TN

TA–W–57,586 & A; Elberton Manufacturing Co., Elberton, GA and Rilla, Inc., Elberton, GA

TA–W–57,377; T-Mobile USA, Inc., National Return Center, LaGrange, GA

TA–W–57,254; Holcim (US), North American Service Center, IT Department, Dundee, MI

TA–W–57,450; Zebra Pen Corp., Edison, NJ

TA–W–57,349; PMC–Sierra, Inc., Microprocessor Products Div., Santa Clara, CA

TA–W–57,419; Sabre, Inc., a div. of Sabre, Inc., Tulsa, OK

TA–W–57,421; Blair Corporation, Erie Returns Center, Erie, PA

TA–W–57,251; J.C. Viramontes, d/b/a International Garment Processors, El Paso, TX

TA–W–57,297; Fashionspun Sales & Development, New York, NY

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–57,516; DiaSys Corporation, Waterbury, CT

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–57,238 & A; Reiter Greensboro, Inc., Greensboro, NC and Spartanburg, SC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–57,406; Dana Corp., Torque-Traction Mfg., Inc., Cape Girardeau, MO: June 13, 2004.

TA–W–57,433; DSM Pharmaceuticals, Inc. (DPI), Information Technology (IT) Div., Greenville, NC: June 17, 2004.

TA–W–57,401; CDS Ensembles, Inc., Greer, SC: June 13, 2004.

TA–W–57,310; Autodie International, Inc., Grand Rapids, MI: May 26, 2004.

TA–W–57,507; Noble Industries, Ltd, Mason City, IA: June 30, 2004.

TA–W–57,463; Union Underwear Co., Inc., a subsidiary of Fruit of The Loom, Cut and Sew Department, Jamestown, KY: June 17, 2004.

TA–57,453; Federal Screw Works, Chelsea Div., Chelsea, MI: June 15, 2004.

TA–W–57,435; Burns Wood Products, Inc., including leased workers of Employment Staffing, Inc., Mulberry Group, People Connection, Able Body Labor and Accuforce Staffing, Granite Falls, NC: June 21, 2004.

TA–W–57,372; HO Sports Co., Inc., Redmond, WA: June 8, 2004.

TA–W–57,388; Nokia Corp., America's Time Zone Operations and logistics Div., including leased on-site workers from Adecco Staffing Services, Fort Worth, TX: June 16, 2004.

TA–W–57,473; Laneko Manufacturing Co., Press Production Div., a subsidiary of Laneko Engineering Co., Royersford, PA: June 23, 2004.

TA–W–57,347; Hart's Manufacturing Co., Corning, AR: June 8, 2004.

TA–W–57,322; Danaher Tool Group, Division of Easco Hand Tools, West Hartford, CT: June 7, 2004.

TA–W–57,558; H.A. Parts Products of Indiana Co (HAPPICO), a subsidiary of Altia Hashimoto, including leased on-site production workers from Manpower, Personnel Management, Inc., Employment Plus, and Labor Ready, Greencastle, IN: July 14, 2004.

TA–W–57,540; Menasha Packaging Co., Otsego Mill, Otsego, MI: July 13, 2004.

TA–W–57,375; Smith Jones, Inc., d/b/a Midwest Manufacturing Co., Kellogg, IA: June 8, 2003.

TA–W–57,315; Magruder Color, Elizabeth, NJ: January 23, 2005.

TA–W–57,236; Pinnacle Foods, Vandekamp Div., of Pinnacle Foods Group, Erie, PA: May 18, 2004.

TA–W–57,513; Tower Automotive Milwaukee, LLC, Milwaukee Business Unit, Milwaukee, WI: June 30, 2004.

TA–W–57,502; Tiercon Industries USA, Inc., Vassar, MI: July 1, 2004.

TA–W–57,549; Crane Plumbing, LLC, Somerset, PA: July 13, 2004.

TA–W–57,515; Diebold Southeast Manufacturing, Inc., a subsidiary of Diebold, Inc., Manufacturing Operations, Danville, VA: June 16, 2004.

TA–W–57,509; Greenville Finishing Co., Greenville, SC: July 5, 2004.

TA–W–57,490; Teleflex, Inc., Automotive Div., Van Wert, OH: July 26, 2005.

TA–W–57,485; Proman Manufacturing Co., Inc., Boston, MA: June 30, 2004.

TA–W–57,527; Dimco-Gray Co., Centerville, OH: June 22, 2004.

TA–W–57,492; Gilmour Manufacturing Co., including leased workers of Ruggieri Enterprises d/b/a Spherion and leased workers of Adecco Employment Services, Somerset, PA: July 11, 2005.

TA–W–57,451; Granite Knitwear, Inc., Granite Quarry, NC: June 22, 2004.

TA–W–57,538; Tyler Pipe Co., Tyler, TX: July 11, 2004.

TA–W–57,371; Hampton Paper and Transfer Printing, Inc., Johnson City, TN: June 9, 2004.

TA–W–57,288; Dana Glacier Vendervell, Glacier Vandervell N.A. Division, a subsidiary of Dana Corp., Caldwell, OH: June 1, 2004.

TA–W–57,279; Guardsmark, LLC, Working on-site at R.J. Reynolds Tobacco Co., Macon, GA: May 24, 2004.

TA–W–57,294; Hawley Products, Inc., Paducah, KY: May 25, 2004.

TA–W–57,477; Mount Vernon Mills, Inc., McCormick, SC: June 28, 2004.

TA–W–57,436; Leviton Manufacturing Co., Inc., Hillsgrove Div., Warwick, RI: June 27, 2005.

TA–W–57,386; First Inertia Switch, Grand Blanc, MI: June 15, 2004.

TA–W–57,384; Laidlaw Corporation, Kingman, AZ: June 15, 2004.

TA–W–57,339; Frazer & Jones Co., a div. of The Eastern Co., Soway, NY: January 3, 2005.

TA–W–57,312; Trans Western Polymers, including on-site leased workers of Hedy Holmes Staffing and Snelling Services, Livermore, CA: May 20, 2004.

TA–W–57,338; Cardinal Home Products, Inc., Tel-O-Post Div., Linesville, PA

TA–W–57,432; Alcoa Automotive Castings, KCC Div., Hawesville, KY

TA–W–57,385; Foster Electric (USA), Inc., Acoustic Authority Div., including leased workers of United Staffing Service, Select Personnel Service, Express Service Group and East-West Staffing, Valencia, CA

TA–W–57,413; Mount Vernon Mills, Inc., a subsidiary of R.B. Pamplin Corp., Tallassee, AL: June 20, 2004.

TA–W–57,486; Homecrest Industries, Wadena, MN

TA–W–57,296; Penn Metal Stamping, Inc., St. Marys, PA

TA–W–57,415; Quantum Corp., Formerly Known as Certance, Costa Mesa, CA

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–57,397; Wyeth, Wyeth Pharmaceuticals, Health Care Div., Rouses Point, NY: June 3, 2004.

TA–W–57,356; KeytronicEMS, Las Cruces Div., including on-site leased workers of Kelly Services, Las Cruces, NM: June 8, 2004.

TA–W–57,295; Findlay Industries, Inc., International Truck Interiors, Findlay, OH: February 15, 2005.

TA–W–57,326; Intel Corp., Hawthorn Farm 1, Systems Manufacturing, Systems Manufacturing Silicon Enabling, including on-site leased workers of Kelly Services, Hillsboro, OR: June 3, 2004.

TA–W–57,423; Bruckner Supply Co., workers on-site at Hamilton Sundstrand, a div. of United Technologies, Grand Junction, CO: June 13, 2004.

TA–W–57,317; Power-One, Inc., Andover, MA: February 20, 2005.

TA–W–57,273; Bernhardt Furniture Company, Upholstery Plant #5, including on-site leased workers of Able Body Temporary Service, Lenoir, NC: May 25, 2004.

TA–W–57,537; Victor Forstmann, Inc., East Dublin, GA: June 19, 2004.

TA–W–57,376; Flexmag Industries, Inc., a subsidiary of Arnold Magnetic Technologies Corp., Plastiform Div., including on-site leased workers of Staffco and Advanced Services, Norfolk, NE: June 8, 2004.

TA–W–57,298 & A; Guilford Mills, Inc., Hornaday Plant, Greensboro, NC and Fuquay Plant, Fuquay-Varina, NC: May 3, 2004.

TA–W–57,350; Motor Appliance Corp., Motors Div., Washington, MO: June 9, 2004.
TA–W–57,405 & A; Foamex, Plant #11, Newton, NC and Plant #60, Conover, NC: June 16, 2004.
TA–W–57,410; Ametek, U.S. Gauge Div., Bartow, FL: May 7, 2005.
TA–W–57,574; VF Jeanswear Limited Partnership, a subsidiary of VF Corp., Luray, VA: July 18, 2004.
TA–W–57,548; R.E. Phelon Co., Lomira, WI: July 2, 2004.
TA–W–57,394; Edscha Roof Systems, LLC, Greer, SC: June 9, 2004.
TA–W–57,484; Oce' Display Graphics Systems, Inc., including on-site leased workers of Accountants, Inc., West Valley Staffing, Pro-Source, Inc., San Jose, CA: June 27, 2004.
TA–W–57,400; Cooper Wiring Devices, Long Island City, NY: July 23, 2004.
TA–W–57,595; Black Rock Trailers, U.S. Div., a subsidiary of Snowbear, including on-site leased workers of Express Person Staffing and Malone, Shepherdsville, KY: July 20, 2004.
TA–W–57,583; Cooper Bussmann, including on-site leased workers of Adecco Personnel, Black Mountain, NC: July 30, 2005.
TA–W–57,550; Burner Systems International, Inc., Bonnyshire Facility, including on-site leased workers of Optimum Staffing and ATS Staffing, Chattanooga, TN: June 29, 2004.
TA–W–57,494; Toter, Inc., Sanger Div., including leased on-site workers of Placement Pros, Sanger, CA: June 14, 2004.
TA–W–57,497; Fun-Tees, Inc., Concord, NC: May 23, 2005.
TA–W–57,529; Batesville Casket Co., Nashua Manufacturing Operations, Nashua, NH: June 24, 2004.
TA–W–57,511; Trane Co., a div. of American Standard Companies, La Crosse, WI: July 6, 2004.
TA–W–57,458; Northern Technologies, Inc., Liberty Lake, WA: June 28, 2004.
TA–W–57,438; Hudson RCI, a/k/a Teleflex Medical, Temecula, CA: June 20, 2004.
TA–W–57,309 & A, B; Kulicke & Soffa Industries, Inc., Plant B, K&S Interconnect, Package Test Div., including on-site leased workers of Superior Staffing and ATR, Hayward, CA, Plant A, K&S Interconnect, Test Div., San Jose, CA, Plant C, Semitec, Hub Blades Div., including on-site leased workers of Advance Technical Resources, Inc., Superior Staffing Services, & Coast Personnel Services, Santa Clara, CA: May 26, 2004.
TA–W–57,429; Tyco Electronics, Power Components—Roychem Div., Menlo Park, CA: June 21, 2004.
TA–W–57,399; Electrolux Home Products, Refrigeration Div., including on-site leased workers of Aerotek, Greenville, MI: June 17, 2004.
TA–W–57,337; Bernhardt Furniture Co., Upholstery Div., Plant #11, including leased on-site workers from Accuforce, Lenoir, NC: May 25, 2004.
TA–W–57,409; Elbeco, Inc., Meyersdale Manufacturing Co., Meyersdale, PA: June 7, 2004.
TA–W–57,365; Best Manufacturing, Cordele Div., Cordele, GA: June 5, 2004.
TA–W–57,335; Teledyne Analytical Instruments, Sensor Department, City of Industry, CA: June 7, 2004.
TA–W–57,325; Danly IEM, Beaver Dam, WI: June 2, 2004.
TA–W–57,478; Thomasville Furniture Industries, Inc., Plant SFD, Lexington, NC, and A; Plant E, Thomasville, NC: March 11, 2005.
TA–W–57,478B; Thomasville Furniture Industries, Inc., Central Machine Facility, Thomasville, NC, C; Central Lumber Yard, Thomasville, NC, C; Central Lumber Yard, Thomasville, NC, D; Central Dry Kiln, Thomasville, NC, E; Wood Waste, Thomasville, NC, F; Plant 64 Lumber Stacker, Lexington, NC and G; Plant 64 Lumber Processing, Lexington, NC: June 29, 2004.
TA–W–57,480; Vishay Micro-Measurements, a subsidiary of Vishay Intertechnology, Inc., Wendell, NC: June 29, 2004.
TA–W–57,282; Bernhardt Furniture Co., Upholstery Div., Plant 6, including leased on-site workers from Accuforce, Lenoir, NC: May 25, 2004.
TA–W–57,209; General Dynamics Land Systems, Wire Harness Group, including on-site leased workers of Manpower, Inc., Imperial, CA: April 21, 2004.
TA–W–57,439 & A; Unit Parts Co., A Remy, Inc., Co., Oklahoma City, OK, and Edmond, OK: June 22, 2004.
TA–W–57,464; Delta Galil USA, Inc., Williamsport, PA: June 28, 2004.
TA–W–57,508; DeBall, Inc., Asheville, NC: July 6, 2004.
TA–W–57,383; Lexalite International Corp., a subsidiary of Summa Industries, Charlevoix, MI: All workers engaged in the production of injection molded products and mold construction builds, who became totally or partially separated from employment on or after June 15, 2004.
TA–W–57,462; Kennametal, Inc., Solid Carbide Drills, Latrobe, PA: June 24, 2004.
TA–W–57,431; Fecheimer Brothers Company, a subsidiary of Berkshire Hathaway, Jefferson, PA: June 16, 2004.
TA–W–57,452; Zorlu Manufacturing Co., LLC, Union Point Facility, Union Point, GA: June 14, 2004.
TA–W–57,437; Eaton Corp., Fluid Power Group, including on-site leased workers of Adecco Personnel, Vinita, OK: June 22, 2004.
TA–W–57,292; JDS Uniphase, Inc., CCP Div., including on-site leased workers of Spherion, Santa Rosa, CA: May 27, 2004.
TA–W–57,441; Wescast Industries of Georgia, Inc., a subsidiary of Wescast holdings USA, Inc., including on-site leased workers of Workstaff Personnel of Georgia, LLC, Cordele, GA: June 22, 2004.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–57,338; Cardinal Home Products, Inc., Tel-O-Post Div., Linesville, PA
TA–W–57,432; Alcoa Automotive Castings, KCC Div., Hawesville, KY
TA–W–57,385; Foster Electric (USA), Inc., Acoustic Authority Div., including leased workers of United Staffing Service, Select Personnel Service, Express Service Group and East-West Staffing, Valencia, CA
TA–W–57,413; Mount Vernon Mills, Inc., a subsidiary of R.B. Pamplin Corp., Tallassee, AL: June 20, 2004.
TA–W–57,486; Homecrest Industries, Wadena, MN
TA–W–57,296; Penn Metal Stamping, Inc., St. Marys, PA
TA–W–57,415; Quantum Corp., Formerly Known as Certance, Costa Mesa, CA

TA–W–57,462; Kennametal, Inc., Solid Carbide Drills, Latrobe, PA: June 24, 2004.

TA–W–57,431; Fecheimer Brothers Company, a subsidiary of Berkshire Hathaway, Jefferson, PA: June 16, 2004.

TA–W–57,452; Zorlu Manufacturing Co., LLC, Union Point Facility, Union Point, GA: June 14, 2004.

TA–W–57,437; Eaton Corp., Fluid Power Group, including on-site leased workers of Adecco Personnel, Vinita, OK: June 22, 2004.

TA–W–57,292; JDS Uniphase, Inc., CCP Div., including on-site leased workers of Spherion, Santa Rosa, CA: May 27, 2004.

TA–W–57,441; Wescast Industries of Georgia, Inc., a subsidiary of Wescast holdings USA, Inc., including on-site leased workers of Workstaff Personnel of Georgia, LLC, Cordele, GA: June 22, 2004.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–57,383; Lexalite International Corp., a subsidiary of Summa Industries, Charlevoix, MI: All workers engaged in the production mold construction builds are denied ATAA

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–57,373; Teradyne, Teradyne Semiconductor Test Div., Central Boston, MA

TA–W–57,392; Apex Texicon, Inc., Bangor, PA

TA–W–57,471; Rohm and Haas Chemicals, LLC, Power Coatings Div., Wytheville, VA

TA–W–57,505; The Eckadams Co., Osceola, AR

TA–W–57,408; Advanced Electronics, Inc., Boston, MA

TA–W–57,417; Unaxis Optics USA, Inc., a subsidiary of Unaxis, including on-site production workers from Excell Personnel and Express Personnel, Golden, CO

TA–W–57,113; Vander-Bend Manufacturing, LLC, Sunnyvale, CA

TA–W–57,259; Omni Integrated Technologies, Inc., Fairfield, OH

TA–W–57,364; Akro-Mills, div. of Myers Industries, Inc., Akron, OH

TA–W–57,468; Milwaukee Electric Tool Corp., Brookfield Plant, Brookfield, WI

TA–W–57,269; Temple Inland, Antioch Div., Antioch, CA

TA–W–57,363; Rhoda Lee, Inc., New York, NY

TA–W–57,271; Cerro Flow Products, Inc., Sauget, IL

TA–W–57,228; St. John Knits, Inc., a div. of St. John Knits International, Inc., San Ysidro, CA

TA–W–57,336 & A; United Machine Works, Inc., Bethel, NC and Greenville, NC

TA–W–57,420; Honeywell Commercial Electronic Systems, a div. of Honeywell International, Glendale, AZ

TA–W–57,426; Mercury Marine Plant 7, Outboard Business Unit, including on-site leased workers of Westaff, St. Cloud, FL

TA–W–57,411; Lexington Home Brands, a subsidiary of Lexington Furniture Industries, Plant 15, Lexington, NC

TA–W–57,498; Custom Machine Works, Inc., Fayetville, AR

TA–W–57,454; Glenayre Electronics, Duluth, GA

TA–W–57,526; Bard na nGleann International, a subsidiary of Ballingeary Co., San Jose, CA

TA–W–57,461; Elkin Printing, Inc., Ronda, NC

TA–W–57,442; Menlo Worldwide, Salem, NH

TA–W–57,532; Roller Derby Skate Corp., Atglen, PA

TA–W–57,532A; California Advanced Sports, La Mirada, CA

TA–W–57,532B; 360, Inc., La Mirada, CA

TA–W–57,470; Wilson Sporting Goods Co., Golf Div., a div. of Amer of Finland, Humboldt, TN

TA–W–57,430; Springs Industries, Inc., Creative Products Group, Rock Hill, SC

TA–W–57,379; Cerro Metal Products Co., a div. of The Marmon Group, Bellefonte, PA

TA–W–57,321; Reum Corporation, a div. of Reum Group, Waukegan, IL

TA–W–57,446; Hercules, Inc., Aqualon Div., Parlin, NJ

TA–W–57,457; TRW Automotive, Occupant Safety Systems Div., Cookeville, TN

TA–W–57,512; U.S. Airways, Inc., Myrtle Beach, SC

TA–W–57,418; The Scotts Co., Global Business Information Services Dept., Operations and Networking Function, Marysville, OH

TA–W–57,391; Nortel Networks, Convergence Multimedia Services, Raleigh, NC

TA–W–57,521; International Paper Co., Printing and Communications Papers Customer Service Div., Memphis, TN

TA–W–57,586 & A; Elberton Manufacturing Co., Elberton, GA and Rilla, Inc., Elberton, GA

TA–W–57,377; T-Mobile USA, Inc., National Return Center, LaGrange, GA

TA–W–57,254; Holcim (US), North American Service Center, IT Department, Dundee, MI

TA–W–57,450; Zebra Pen Corporation, Edison, NJ

TA–W–57,349; PMC-Sierra, Inc., Microprocessor Products Div., Santa Clara, CA

TA–W–57,419; Sabre Holdings, Inc., a div. of Sabre, Inc., Tulsa, OK

TA–W–57,421; Blair Corporation, Erie Returns Center, Erie, PA

TA–W–57,251; J.C. Viramontes, d/b/a International Garment Processors, El Paso, TX

TA–W–57,297; Fashionspun Sales & Development, New York, NY

TA–W–57,488; Plastic Oddities, Inc., Shelby, NC

TA–W–57,516; DiaSys Corporation, Waterbury, CT

TA–W–57,238 & A; Reiter Greensboro, Inc., Greensboro, NC and Spartanburg, SC

TA–W–57,403; Alfa Laval, Inc., Fluid Handling Operation, Pleasant Prairie, WI

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–57,401; CDS Ensembles, Inc., Greer. SC: June 13, 2004.

TA–W–57,310; Autodie International, Inc., Grand Rapids, MI: May 26, 2004.

TA–W–57,507; Noble Industries, Ltd, Mason City, IA: June 30, 2004.

TA–W–57,463; Union Underwear Co., Inc., a subsidiary of Fruit of The Loom, Cut and Sew Department, Jamestown, KY: June 17, 2004.

TA–57,453; Federal Screw Works, Chelsea Div., Chelsea, MI: June 15, 2004.
TA–W–57,435; Burns Wood Products, Inc., including leased workers of Employment Staffing, Inc., Mulberry Group, People Connection, Able Body Labor and Accuforce Staffing, Granite Falls, NC: June 21, 2004.
TA–W–57,372; HO Sports Co., Inc., Redmond, WA: June 8, 2004.
TA–W–57,388; Nokia Corp., America's Time Zone Operations and logistics Div., including leased on-site workers from Adecco Staffing Services, Fort Worth, TX: June 16, 2004.
TA–W–57,473; Laneko Manufacturing Co., Press Production Div., a subsidiary of Laneko Engineering Co., Royersford, PA: June 23, 2004.
TA–W–57,347; Hart's Manufacturing Co., Corning, AR: June 8, 2004.
TA–W–57,322; Danaher Tool Group, Division of Easco Hand Tools, West Hartford, CT: June 7, 2004.
TA–W–57,558; H.A. Parts Products of Indiana Co (HAPPICO), a subsidiary of Altia Hashimoto, including leased on-site production workers from Manpower, Personnel Management, Inc., Employment Plus, and Labor Ready, Greencastle, IN: July 14, 2004.
TA-W–57,540; Menasha Packaging Co., Otsego Mill, Otsego, MI: July 13, 2004.
TA-W–57,375; Smith Jones, Inc., d/b/a Midwest Manufacturing Co., Kellogg, IA: June 8, 2003.
TA-W–57,315; Magruder Color, Elizabeth, NJ: January 23, 2005.
TA-W–57,236; Pinnacle Foods, Vandekamp Div., of Pinnacle Foods Group, Erie, PA: May 18, 2004.
TA-W–57,513; Tower Automotive Milwaukee, LLC, Milwaukee Business Unit, Milwaukee, WI: June 30, 2004.
TA-W–57,502; Tiercon Industries USA, Inc., Vassar, MI: July 1, 2004.
TA-W–57,549; Crane Plumbing, LLC, Somerset, PA: July 13, 2004.
TA-W–57,515; Diebold Southeast Manufacturing, Inc., a subsidiary of Diebold, Inc., Manufacturing Operations, Danville, VA: June 16, 2004.
TA-W–57,509; Greenville Finishing Co., Greenville, SC: July 5, 2004.
TA-W–57,490; Teleflex, Inc., Automotive Div., Van Wert, OH: July 26, 2005
TA-W–57,485; Proman Manufacturing Co., Inc., Boston, MA: June 30, 2004.
TA-W–57,527; Dimco-Gray Co., Centerville, OH: June 22, 2004.
TA-W–57,492; Gilmour Manufacturing Co., including leased workers of Ruggieri Enterprises d/b/a Spherion and leased workers of Adecco Employment Services, Somerset, PA: July 11, 2005.
TA-W–57,451; Granite Knitwear, Inc., Granite Quarry, NC: June 22, 2004.
TA-W–57,538; Tyler Pipe Co., Tyler, TX: July 11, 2004.
TA-W–57,371; Hampton Paper and Transfer Printing, Inc., Johnson City, TN: June 9, 2004.
TA-W–57,288; Dana Glacier Vendervell, Glacier Vandervell N.A. Division, a subsidiary of Dana Corp., Caldwell, OH: June 1, 2004.
TA-W–57,279; Guardsmark, LLC, Working on-site at R.J. Reynolds Tobacco Co., Macon, GA: May 24, 2004.
TA-W–57,294; Hawley Products, Inc., Paducah, KY: May 25, 2004.
TA-W–57,477; Mount Vernon Mills, Inc., McCormick, SC: June 28, 2004.
TA-W–57,436; Leviton Manufacturing Co., Inc., Hillsgrove Div., Warwick, RI: June 27, 2005.
TA-W–57,386; First Inertia Switch, Grand Blanc, MI: June 15, 2004.
TA-W–57,384; Laidlaw Corporation, Kingman, AZ: June 15, 2004.
TA-W–57,339; Frazer & Jones Co., a div. of The Eastern Co., Soway, NY: January 3, 2005.
TA-W–57,312; Trans Western Polymers, including on-site leased workers of Hedy Holmes Staffing and Snelling Services, Livermore, CA: May 20, 2004.
TA-W–57,397; Wyeth, Wyeth Pharmaceuticals, Health Care Div., Rouses Point, NY: June 3, 2004.
TA-W–57,356; KeytronicEMS, Las Cruces Div., including on-site leased workers of Kelly Services, Las Cruces, NM: June 8, 2004.
TA-W–57,295; Findlay Industries, Inc., International Truck Interiors, Findlay, OH: February 15, 2005.
TA-W–57,326; Intel Corp., Hawthorn Farm 1, Systems Manufacturing, Systems Manufacturing Silicon Enabling, including on-site leased workers of Kelly Services, Hillsboro, OR: June 3, 2004.
TA-W–57,423; Bruckner Supply Co., workers on-site at Hamilton Sundstrand, a div. of United Technologies, Grand Junction, CO: June 13, 2004.
TA-W–57,317; Power-One, Inc., Andover, MA: February 20, 2005.
TA-W–57,273; Bernhardt Furniture Company, Upholstery Plant #5, including on-site leased workers of Able Body Temporary Service, Lenoir, NC: May 25, 2004.
TA-W–57,537; Victor Forstmann, Inc., East Dublin, GA: June 19, 2004.
TA-W–57,376; Flexmag Industries, Inc., a subsidiary of Arnold Magnetic Technologies Corp., Plastiform Div., including on-site leased workers of Staffco and Advanced Services, Norfolk, NE: June 8, 2004.
TA-W–57,298 & A; Guilford Mills, Inc., Hornaday Plant, Greensboro, NC and Fuquay Plant, Fuquay-Varina, NC: May 3, 2004.
TA-W–57,350; Motor Appliance Corp., Motors Div., Washington, MO: June 9, 2004.
TA-W–57,405 & A; Foamex, Plant #11, Newton, NC and Plant #60, Conover, NC: June 16, 2004.
TA-W–57,410; Ametek, U.S. Gauge Div., Bartow, FL: May 7, 2005.
TA-W–57,574; VF Jeanswear Limited Partnership, a subsidiary of VF Corp., Luray, VA: July 18, 2004.
TA-W–57,548; R.E. Phelon Co., Lomira, WI: July 2, 2004.
TA-W–57,394; Edscha Roof Systems, LLC, Greer, SC: June 9, 2004.
TA-W–57,484; Oce' Display Graphics Systems, Inc., including on-site leased workers of Accountants, Inc., West Valley Staffing, Pro-Source, Inc., San Jose, CA: June 27, 2004.
TA-W–57,400; Cooper Wiring Devices, Long Island City, NY: July 23, 2004.
TA-W–57,595; Black Rock Trailers, U.S. Div., a subsidiary of Snowbear, including on-site leased workers of Express Person Staffing and Malone, Shepherdsville, KY: July 20, 2004.
TA-W–57,583; Cooper Bussmann, including on-site leased workers of Adecco Personnel, Black Mountain, NC: July 30, 2005.
TA-W–57,529; Batesville Casket Co., Nashua Manufacturing Operations, Nashua, NH: June 24, 2004.
TA-W–57,550; Burner Systems International, Inc., Bonnyshire Facility, including on-site leased workers of Optimum Staffing and ATS Staffing, Chattanooga, TN: June 29, 2004.
TA-W–57,494; Toter, Inc., Sanger Div., including leased on-site workers of Placement Pros, Sanger, CA: June 14, 2004.
TA-W–57,497; Fun-Tees, Inc., Concord, NC: May 23, 2005.
TA-W–57,511; Trane Co., a div. of American Standard Companies, La Crosse, WI: July 6, 2004.
TA-W–57,458; Northern Technologies, Inc., Liberty Lake, WA: June 28, 2004.
TA-W–57,438; Hudson RCI, a/k/a Teleflex Medical, Temecula, CA: June 20, 2004.
TA-W–57,309 & A, B; Kulicke & Soffa Industries, Inc., Plant B, K&S Interconnect, Package Test Div.,

including on-site leased workers of Superior Staffing and ATR, Hayward, CA, Plant A, K&S Interconnect, Test Div., San Jose, CA, Plant C, Semitec, Hub Blades Div., including on-site leased workers of Advance Technical Resources, Inc., Superior Staffing Services, and Coast Personnel Services, Santa Clara, CA: May 26, 2004.

TA-W–57,429; Tyco Electronics, Power Components—Roychem Div., Menlo Park, CA: June 21, 2004.

TA-W–57,399; Electrolux Home Products, Refrigeration Div., including on-site leased workers of Aerotek, Greenville, MI: June 17, 2004.

TA-W–57,337; Bernhardt Furniture Co., Upholstery Div., Plant #11, including leased on-site workers from Accuforce, Lenoir, NC: May 25, 2004.

TA-W–57,409; Elbeco, Inc., Meyersdale Manufacturing Co., Meyersdale, PA: June 7, 2004.

TA-W–57,365; Best Manufacturing, Cordele Div., Cordele, GA: June 5, 2004.

TA-W–57,335; Teledyne Analytical Instruments, Sensor Department, City of Industry, CA: June 7, 2004.

TA-W–57,325; Danly IEM, Beaver Dam, WI: June 2, 2004.

TA-W–57,478; Thomasville Furniture Industries, Inc., Plant SFD, Lexington, NC, and A; Plant E, Thomasville, NC: March 11, 2005.

TA-W–57,478B; Thomasville Furniture Industries, Inc., Central Machine Facility, Thomasville, NC, C; Central Lumber Yard, Thomasville, NC, C; Central Lumber Yard, Thomasville, NC, D; Central Dry Kiln, Thomasville, NC, E; Wood Waste, Thomasville, NC, F; Plant 64 Lumber Stacker, Lexington, NC and G; Plant 64 Lumber Processing, Lexington, NC: June 29, 2004.

TA-W–57,480; Vishay Micro-Measurements, a subsidiary of Vishay Intertechnology, Inc., Wendell, NC: June 29, 2004.

TA-W–57,282; Bernhardt Furniture Co., Upholstery Div., Plant 6, including leased on-site workers from Accuforce, Lenoir, NC: May 25, 2004.

TA-W–57,209; General Dynamics Land Systems, Wire Harness Group, including on-site leased workers of Manpower, Inc., Imperial, CA: April 21, 2004.

TA-W–57,439 & A; Unit Parts Co., A Remy, Inc., Co., Oklahoma City, OK, and Edmond, OK: June 22, 2004.

TA-W–57,464; Del TA Galil USA, Inc., Williamsport, PA: June 28, 2004.

TA-W–57,508; DeBall, Inc., Asheville, NC: July 6, 2004.

TA-W–57,383; Lexalite International Corp., a subsidiary of Summa Industries, Charlevoix, MI: All workers engaged in the production of injection molded products, who became totally or partially separated from employment on or after June 15, 2004.

TA-W–53,754; Douglas Quikut, Quikut Div., Walnut Ridge, AR: November 5, 2002 through December 23, 2005.

TA-W–52,445; Baron Drawn Steel Corp., Toledo, OH: July 21, 2002 through August 25, 2005.

TA-W–54,970; Lifescan, Inc., a div. of Johnson and Johnson, Milpitas, CA: May 20, 2003 through July 2, 2006.

TA-W–53,912; AK Steel, Butler, PA: December 31, 2002 through February 11, 2006.

TA-W–54,181; Oxford Industries, Cutting Department, Gaffney, SC: February 4, 2003 through February 23, 2006.

I hereby certify that the aforementioned determinations were issued during the month of July 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 16, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4677 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,596]

Dorr-Oliver Eimco USA Inc., Salt Lake City, UT; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 21, 2005, in response to a petition filed by a company official on behalf of workers of Dorr-Oliver Eimco USA Inc., Salt Lake City, Utah.

The TAA petition form used to file on behalf of the workers is deemed invalid because it did not have a valid OMB control number. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed in Washington, DC, this 9th day of August, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4679 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,322]

Holo-Krome Company/Danaher Tool Group, Division of Easco Hand Tools, West Hartford, CT; 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 22, 2005, applicable to workers of Danaher Tool Group, Division of Easco Hand Tools, West Hartford, Connecticut. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hex keys.

New information shows that that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Holo-Krome Company/Danaher Tool Group.

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 Danaher Tool Group, a Division of Easco Hand Tools, West Hartford, Connecticut who were adversely affected increased imports.

The amended notice applicable to TA–W–57,322 is hereby issued as follows:

''All workers of Holo-Krome Company/Danaher Tool Group, a Division of Easco Hand Tool, West Hartford, Connecticut, who became totally or partially separated from employment on or after June 7, 2004 through July 22, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible

to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 12th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4673 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,620]

International Manufacturing, El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 26, 2005 in response to a petition filed on behalf of workers at International Manufacturing, El Paso, Texas.

The petitioning group of workers is covered by an earlier petition (TA–W–57,599) filed on July 20, 2005 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 2nd day of August, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4681 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,077]

Radicispandex Corporation, Fall River, MA; Notice of Revised Determination on Reconsideration

By application of July 15, 2005 a company official 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) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on June 9, 2005 and published in the **Federal Register** on July 14, 2005 (70 FR 40741).

The TAA petition, filed on behalf of workers at Radicispandex Corporation, Fall River, Massachusetts engaged in administrative support related to production of spandex fibers was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974 was not met.

A review of the initial investigation determined that the workers of the subject firm may qualify for TAA eligibility on the basis of a secondary upstream supplier impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that workers of Radicispandex Corporation, Fall River, Massachusetts supported production of affiliated facilities which supplied spandex fibers that were used in the production of knit fabric, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

The group eligibility criteria for the ATAA program that the Department must consider under Section 246 of the Trade Act are:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.
2. Whether the workers in the workers' firm possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

The Department has determined that criterion 3 has not been met.

The investigation revealed workers in the workers' firm do possess skills that are easily transferable skills.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Radicispandex Corporation, Fall River, Massachusetts qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

''All workers of Radicispandex Corporation, Fall River, Massachusetts who became totally or partially separated from employment on or after April 28, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;'' and

I further determine that all workers of Radicispandex Corporation, Fall River, Massachusetts are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4671 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,320]

Sabre, Inc., Travel Network North America Division, Southlake, TX; 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 Sabre, Inc., Travel Network North America Division, Southlake, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,320; Sabre, Inc. Travel Network North America Division Southlake, Texas (August 19, 2005)

Signed at Washington, DC, this 19th day of August, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4672 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,370]

Sportrack Automotive, Port Huron, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 13, 2005 in response to petition filed by the State of Michigan, Macomb/St. Clair Workforce Development Board on behalf of

workers at Sportrack Automotive, Port Huron, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of August, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4676 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the ''**Federal Register**'', or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the ''**Federal Register**'' are in parentheses following the decision being modified.

Volume I:

New Jersey
NJ20030001 (JUN. 13, 2003)
NJ20030009 (JUN. 13, 2003)
Vermont
VT20030001 (JUN. 13, 2003)
VT20030007 (JUN. 13, 2003)
VT20030008 (JUN. 13, 2003)
VT20030009 (JUN. 13, 2003)
VT20030010 (JUN. 13, 2003)
VT20030011 (JUN. 13, 2003)
VT20030013 (JUN. 13, 2003)
VT20030042 (JUN. 13, 2003)
VT20030043 (JUN. 13, 2003)
VT20030044 (JUN. 13, 2003)

VOLUME II:

District of Columbia
DC20030001 (JUN. 13, 2003)
DC20030003 (JUN. 13, 2003)
Maryland
MD20030016 (JUN. 13, 2003)
MD20030036 (JUN. 13, 2003)
MD20030048 (JUN. 13, 2003)
MD20030056 (JUN. 13, 2003)
MD20030057 (JUN. 13, 2003)
Virginia
VA20030052 (JUN. 13, 2003)
VA20030079 (JUN. 13, 2003)
VA20030092 (JUN. 13, 2003)
VA20030099 (JUN. 13, 2003)

VOLUME III:

Kentucky
KY20030001 (JUN. 13, 2003)
KY20030002 (JUN. 13, 2003)
KY20030003 (JUN. 13, 2003)
KY20030004 (JUN. 13, 2003)
KY20030006 (JUN. 13, 2003)
KY20030007 (JUN. 13, 2003)
KY20030025 (JUN. 13, 2003)
KY20030027 (JUN. 13, 2003)
KY20030028 (JUN. 13, 2003)
KY20030029 (JUN. 13, 2003)
KY20030035 (JUN. 13, 2003)

VOLUME IV:

Michigan
MI20030007 (JUN. 13, 2003)
MI20030036 (JUN. 13, 2003)
MI20030040 (JUN. 13, 2003)
MI20030041 (JUN. 13, 2003)
MI20030046 (JUN. 13, 2003)
MI20030047 (JUN. 13, 2003)
MI20030049 (JUN. 13, 2003)
MI20030050 (JUN. 13, 2003)
MI20030052 (JUN. 13, 2003)
MI20030079 (JUN. 13, 2003)
MI20030080 (JUN. 13, 2003)
MI20030081 (JUN. 13, 2003)
MI20030082 (JUN. 13, 2003)
MI20030083 (JUN. 13, 2003)
MI20030084 (JUN. 13, 2003)
MI20030085 (JUN. 13, 2003)
MI20030086 (JUN. 13, 2003)
MI20030087 (JUN. 13, 2003)
MI20030088 (JUN. 13, 2003)
MI20030099 (JUN. 13, 2003)
MI20030100 (JUN. 13, 2003)
MI20030101 (JUN. 13, 2003)
MI20030103 (JUN. 13, 2003)
MI20030104 (JUN. 13, 2003)
MI20030105 (JUN. 13, 2003)
MI20030106 (JUN. 13, 2003)

VOLUME V:

Kansas
KS20030006 (JUN. 13, 2003)
KS20030008 (JUN. 13, 2003)
KS20030009 (JUN. 13, 2003)
KS20030010 (JUN. 13, 2003)
KS20030012 (JUN. 13, 2003)
KS20030015 (JUN. 13, 2003)
KS20030016 (JUN. 13, 2003)
Missouri
MO20030002 (JUN. 13, 2003)
MO20030009 (JUN. 13, 2003)
MO20030050 (JUN. 13, 2003)

VOLUME VI:

Alaska
AK20030001 (JUN. 13, 2003)
AK20030002 (JUN. 13, 2003)
AK20030006 (JUN. 13, 2003)
Idaho
ID20030017 (JUN. 13, 2003)
ID20030019 (JUN. 13, 2003)
Oregon
OR20030001 (JUN. 13, 2003)
Washington
WA20030002 (JUN. 13, 2003)

VOLUME VII:

California
CA20030004 (JUN. 13, 2003)
CA20030009 (JUN. 13, 2003)
CA20030010 (JUN. 13, 2003)
CA20030013 (JUN. 13, 2003)
CA20030027 (JUN. 13, 2003)
CA20030029 (JUN. 13, 2003)
CA20030030 (JUN. 13, 2003)
CA20030032 (JUN. 13, 2003)
CA20030034 (JUN. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of August, 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–16768 Filed 8–25–05; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based on the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. For further information contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia this 22nd day of August 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2004–049-C.
FR Notice: 69 FR 71434.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.507.
Summary of Findings: Petitioner's proposal is to use non-permissible submersible pumps in bleeder and return entries and sealed areas of the Loveridge No. 22 Mine under specific terms and conditions. This is considered an acceptable alternative method for the Loveridge No. 22 Mine. MSHA grants the petition for modification for the use of low- and medium-voltage, three-phase, alternating-current submersible pump(s) installed in return and bleeder entries and sealed areas in the Loveridge No. 22 Mine with conditions.

Docket No.: M–2005–003–C.
FR Notice: 70 FR 7760.
Petitioner: Mississippi Lignite Mining Company.
Regulation Affected: 30 CFR 77.803.
Summary of Findings: Petitioner's proposal is to use an alternative method of compliance when raising or lowering the boom mast at construction sites during initial dragline assembly, and in instances of disassembly or major repairs. The petitioner lists specific guidelines that will be used to minimize the potential for electrical power loss during the boom procedure. This is considered an acceptable alternative method for the Red Hills Mine. MSHA grants the petition for modification for dragline boom or mast raising, lowering, assembling, disassembling, or during major repairs that require raising or lowering the dragline boom or mast by the on-board generators at the Red Hills Mine with conditions.

Docket No.: M–2005–024–C.
FR Notice: 70 FR 19506.
Petitioner: Ohio County Coal.
Regulation Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal is to have a person trained in testing procedures specific to the deluge-type water spray fire suppression system to conduct a visual examination of the deluge-type water spray fire suppression systems; to conduct a functional test by actuating the system and observing its performance; and to

record the results of the examination and functional test in a book that will be maintained on the surface and made available to the authorized representative of the Secretary. This is considered an acceptable alternative method for the Big Run Mine. MSHA grants the petition for modification for the deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles at the Big Run Mine with conditions.

Docket No.: M–2005–026–C.
FR Notice: 70 FR 22376.
Petitioner: Spartan Mining Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use a 2,400-volt power center to power a continuous miner with high-voltage trailing cables inby the last open crosscut and within 150 feet of pillar workings. This is considered an acceptable alternative method for the Scotch Pine Mine and Midway Mine. MSHA grants the petition for modification for the use of the 2,400-volt high-voltage continuous miner(s) at the Scotch Pine Mine and Midway Mine with conditions.

Docket No.: M–2005–027–C.
FR Notice: 70 FR 22376.
Petitioner: Aracoma Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use one six-wheel Getman Roadbuilder grader, Model RDG–1504A, serial number 6782 without front brakes, as it was originally designed. The grader is equipped with dual brake systems on the four (4) rear wheels and designed to prevent loss of braking due to a single component failure. The petitioner will provide training to grader operators on how to lower the moldboard for additional stopping capability in emergencies; to recognize the appropriate speeds to use on different roadway conditions; and to limit the maximum speed of the grader to 10 miles per hour. This is considered an acceptable alternative method for the Aracoma Alma #1 Mine. MSHA grants the petition for modification for the Aracoma Alma #1 Mine with conditions.

Docket No.: M–2005–033–C.
FR Notice: 70 FR 28321.
Petitioner: Coulterville Coal Company, LLC.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to use one six-wheel Getman Roadbuilder grader, Model RDG–1504S, serial number 6739 without front brakes, as it was originally designed. The grader is equipped with dual brake systems on the four (4) rear wheels and designed to prevent loss of braking due to a single component failure. The petitioner will provide training to grader operators on how to limit the maximum speed of the Roadbuilder to 10 miles per hour by permanently blocking out any gear that would provide higher speed, or use transmission and differential ratios that would limit the maximum speed to 10 miles per hour; to recognize the appropriate speeds to use on different roadway conditions and slopes; and to lower the grader blade for additional stopping capability in emergencies. This is considered an acceptable alternative method for the Gateway Mine. MSHA grants the petition for modification for the Gateway Mine with conditions.

Docket No.: M–2004–009–M.
FR Notice: 69 FR 69415.
Petitioner: Unimin Corporation.
Regulation Affected: 30 CFR 56.13020.
Summary of Findings: Petitioner's proposal is to implement a clothes cleaning booth process that has been jointly developed with and successfully tested by the National Institute for Occupational Safety and Health (NIOSH), for the use of controlled compressed air for cleaning miners' dust laden clothing. This is considered an acceptable alternative method for the Marston Plant Mine. MSHA grants the petition for modification for only miners who are trained in the operation of the NIOSH tested clothes cleaning booth for cleaning their dust-laden clothes at the Marston Plant Mine with conditions.

[FR Doc. 05–17003 Filed 8–25–05; 8:45 am]
BILLING CODE 4510–43–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities; Extension of Currently Approved Information Collection; Comment Request; U.S. Institute for Environmental Conflict Resolution Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the Institute), part of the Morris K. Udall Foundation, is submitting to the Office of Management and Budget (OMB) a request for an extension for the currently approved information collection (ICR), OMB Control Number 3320–0008: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals (''National Roster of ECR Practitioners'' or ''roster''), currently operating pursuant to OMB clearance issued October 17, 2002 and which expires October 31, 2005. The Institute published a **Federal Register** notice on June 20, 2005 (70 FR 35457–35460), to solicit public comments for a 60-day period. The Institute received one comment seeking clarification of the roster members' ''neutrality''. The Institute provided a responsive explanation. The comment did not relate to the application which the subject of this ICR; thus, no changes were made to the application. The purpose of this notice is to allow an additional 30 days for public comments regarding this information collection.

DATES: Comments must be submitted on or before September 26, 2005.

ADDRESSES: Direct comments to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). Attention: Keith Belton, 725 17th Street, NW., Washington, DC 20503, Desk Officer for the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution; *kbelton@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, including a copy of the ICR, contact Joan C. Calcagno, Roster Manager, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Ave., Tucson, Arizona 85701. Fax: 520–670–5530. Phone: 520–670–5299. E-mail: *roster@ecr.gov.*

SUPPLEMENTARY INFORMATION:

A. Title for the Collection of Information

Application for National Roster of Environmental Dispute Resolution and Consensus Building Professionals (''National Roster of ECR Practitioners'').

B. Potentially Affected Persons

You are potentially affected by this action if you are a dispute resolution or consensus building professional in the environmental or natural resources field who wishes to be listed on the National Roster of Environmental Dispute

Resolution and Consensus Building Professionals.

C. Questions To Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution requests your comments to any of the following questions related to collecting information for the extension of the Application for the National Roster of ECR Practitioners:

(1) Is the continued use of the application (''collection of information'') necessary for the proper performance of the functions of the agency, including whether the information has practical utility?

(2) Is the agency's estimate of the time spent completing the application (''burden of the proposed collection of information'') accurate, including the validity of the methodology and assumptions used?

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information collected?

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology?

D. Abstract

The U.S. Institute for Environmental Conflict Resolution plans to continue collecting information from environmental dispute resolution and consensus building neutral professionals who desire to become members of the National Roster of ECR Practitioners, from which the Institute and those involved in environmental, natural resource, or public lands disputes may locate providers of neutral services. Responses to the collection of information (the application) are voluntary, but required to obtain a benefit (listing on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals). 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.

Background Information: U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution was created in 1998 by the Environmental Policy and Conflict Resolution Act (Pub. L. 105–156). The U.S. Institute is a Federal program established by the U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent Federal agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains the National Roster of ECR Practitioners, a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate neutral. The Institute accomplishes most of its work by partnering, contracting with, or referral to, experienced practitioners.

The Need for and Use of the Information Collected in the Application for the Roster of ECR Practitioners

Roster of ECR Practitioners Application: The application can be viewed on-line from the Institute's Web site: *http://www.ecr.gov* (simply register in the application system to access and review an application). A hardcopy application may also be obtained from the Institute for those without Web access (see contact information above).

Background Information: The information collected in the application for the National Roster of ECR Practitioners is the basis for an on-line database searchable by a combination of 10 criteria designed to locate appropriate practitioners by matching desired characteristics with the information in the application. The application was first available in September 1999 and remains available on a continuous basis. The Roster of ECR Practitioners first became operational in February 2000 with 60 members and currently includes over 255 members from 41 states, the District of Columbia, and 2 Canadian provinces. They represent a broad cross-section of professional backgrounds and a broad distribution of case experience across 42 types of case issues. Each member has documented experience which meets the roster entry criteria, and each has experience as a neutral in some or all of the following: mediation, facilitation, consensus building, process design, conflict assessment, system design, neutral evaluation/fact finding, superfund allocation, and/or regulatory negotiation.

The specific entry criteria and applicable definitions are available from the Institute's Web site: *http://ecr.gov/roster.htm.* Generally stated, the entry criteria require that an applicant has:

(1) Served as the lead neutral in a collaborative process (*e.g.*, mediation, consensus building, conflict assessment) for at least 200 case hours in two to ten environmental cases, and

(2) accumulated a total of 60 points across three categories: Additional case experience and complex case experience; experience as a trainer or trainee; and substantive work/volunteer/educational experience in fields related to Alternative Dispute Resolution/Environmental Conflict Resolution, such as law, science, public administration.

Use of the National Roster of ECR Practitioners: The roster search and referral service has been accessible through the Institute since February 2000. The Institute uses the roster (specifically the information collected in the application) as a resource when making referrals to those searching for neutral ECR professionals with specific experience, backgrounds, or expertise (external referrals). The Institute also uses the roster as a resource when locating appropriate ECR neutral professionals with whom to partner/sub-contract for projects in which the Institute is involved (internal referrals), pursuant to the Institute's statutory direction to work with practitioners located near the dispute, when practicable and appropriate. The roster referral system is enhanced through cooperation with existing programs and networks of environmental dispute-resolution and consensus-building practitioners familiar with the issues in their respective States and regions.

In October 2004, the roster became directly available on the Web to anyone interested in locating ECR practitioners. Since then, anyone interested in locating ECR practitioners can contact the Institute for a referral through the Roster Manager or register in the search system and search the roster themselves. The Roster Manager remains available to assist searchers in getting the best use of the roster search and to provide advice about next steps.

The Environmental Protection Agency (EPA) Alternative Dispute Resolution (ADR) personnel have had direct, electronic access to search the roster since February 2000. The Department of Interior Office of Collaborative Action and Dispute Resolution and ADR

personnel from various DOI bureaus have had direct access since November 2002. Roster Members have also had direct access to the search since May 2004. Statistics related to the use of the roster since February 2000 can be found in the Roster Program Overview, available from: *http://ecr.gov/roster/progsumm.html.*

Federal agencies are not required to select from the roster. Professionals not on the roster remain fully eligible to serve as ECR practitioners in disputes involving Federal agencies. Finally, being listed on the roster does not guarantee additional work for the practitioner.

Development and Need for the National Roster of ECR Practitioners: The roster was developed with the support of the Environmental Protection Agency. Based on a 1997 study concerning the potential of a national roster of qualified practitioners, EPA decided to support the development of such a roster through the Institute.

To develop the project, the EPA and the Institute brought together a work group consisting of EPA dispute resolution professionals and contracting officers, State dispute resolution officials, private dispute resolution practitioners and academics. Informed in part by ideas from this group, the EPA and the Institute proposed roster entry qualifications and draft application, which were published in the **Federal Register** in November 1998. Before the entry criteria and application were finalized, the comments received in response to the **Federal Register** notice were reviewed. Outreach continued through meetings and newsletter articles, as well as individual communications to professional associations, State and Federal Government agencies, dispute resolution firms, individual practitioners, professional associations of attorneys, environmental and citizen groups.

The roster was created, and continues to be needed, for several reasons. The use of Alternative Dispute Resolution in the environmental and public policy arena has grown markedly over the last two decades. In this context, ADR processes now include techniques ranging from conflict prevention, such as consensus building and facilitation of public policy dialogues, to specific dispute resolution through assisted negotiations and mediation. The number of environmental conflict resolution (ECR) practitioners has grown as the field has gained prominence and professionals from a variety of disciplines have become attracted to its advantages and opportunities.

An essential step in any dispute resolution process occurs when parties select a practitioner. Parties making the selection rightfully expect that the practitioner will be qualified to provide the service sought and has experience and style matched well to the nature of the issues and to the parties. Thus, the National Roster of ECR Practitioners is designed to advance the interests of the growing field of dispute resolution, reflect the evolving standards of best practice, and help direct the expenditure of public funds for quality services.

In fifteen years of using ADR, before the creation of the National Roster of ECR Practitioners, EPA found that parties to a dispute or controversy generated a list of desired characteristics, such as experience with specific types of issues, cases or disputes, location, and other factors, that they would use in an attempt to identify the right person to assist them. Locating practitioners meeting these criteria was often a ''hit-or-miss'' experience depending on the resources, available time, and experience of the parties with locating appropriate neutrals.

Although the EPA operates a national service contract that manages major cases through a list of experienced providers, it is limited in scope and membership, and as a consequence it can be burdensome to use to identify neutrals for small or localized cases. Most other Federal agencies have no vehicle or information available to assist in this important first step to conducting a good dispute resolution process.

More specifically, the National Roster of ECR Practitioners is necessary for the proper performance of the Institute's goals: to resolve Federal environmental disputes in a timely and constructive manner; to increase the appropriate use of environmental conflict resolution; to improve the ability of Federal agencies and other interested parties to engage in ECR effectively; and to promote collaborative problem-solving and consensus-building during the design and implementation of Federal environmental policies so as to prevent and reduce the incidence of future environmental disputes.

In addition, the U.S. Institute's enabling legislation directs the Institute to work with practitioners located near the conflict whenever practical. Consistent with this mandate, the Institute must be able to identify appropriate experienced dispute resolution and consensus building professionals in an efficient manner.

Finally, the Administrative Dispute Resolution (ADR) Act of 1996 (5 U.S.C. 571 *et seq.*) authorizes the Federal government to contract with dispute resolution professionals (*e.g.*, facilitators or mediators) to assist it and other parties to disputes in reaching an agreement, settlement, or consensus. The ADR Act authorizes the government to take steps to make identifying and contracting with neutrals easier (cf. 5 U.S.C. 573(c)).

Thus, the goal of the National Roster of ECR Practitioners and the referral system is to improve access to qualified environmental dispute resolution and consensus building professionals for the Institute and others sponsoring or engaging in environmental conflict resolution processes. The roster expedites the identification of appropriate professionals, shortens the time needed to complete contracting documents, and helps refer parties to practitioners, particularly practitioners in the locale of the dispute.

The roster and the referral system provide an efficient, credible and user-friendly source from which to systematically identify experienced environmental neutral professionals; increase the use of collaborative processes by providing a useful tool for locating appropriate practitioners; and provide users with detailed Practitioner Profiles, reflecting information contained in the application, to be used as a helpful first step in the process of selecting an appropriate neutral.

E. Burden Statement

The application compiles data available from the resumes of dispute resolution and consensus building professionals into a format that is standardized for efficient and fair eligibility review, database searches, and retrievals. A professional needs to complete the form only one time. Once the application is approved, the roster member has continual access to his or her on-line account to update information, on a voluntary basis. The burden includes time spent to review instructions, review resume information, and enter the information in the form.

Likely Respondents: Environmental dispute resolution and consensus building professionals (new respondents); existing roster members (for updating).

Proposed Frequency of Response: one, with voluntary updates approximately once per year.

Estimated Number of New Respondents (first extension year): 30.

Estimated Number of Existing Respondents—for updating (first extension year): 125.

Estimated Number of New Respondents (per year for succeeding year): 30.

Estimated Number of Existing Respondents—for updating (per year for succeeding year): 125.

Respondent Time Burden Estimates:

Estimated Time per New Response: 150 minutes (2.5 hours).

Estimated Number of Updates (per year): 1, for 125 existing respondents.

Estimated Time for Update: 15 minutes.

Estimated Total First Extension Year Burden: 4500 minutes (75 hours) (30 new respondents); 1875 minutes (31.25 hours) (125 updates).

Estimated Total Subsequent Year Annual Burden: 4500 minutes (75 hours) (30 new respondents); 1875 minutes (31.25 hours) (125 updates).

Respondent Cost Burden Estimates (at $150. per hour):* No capital or start-up costs.

Estimated Cost per Respondent (first extension year): $375 (new respondents); $38 (updates).

Estimated Cost per Respondent (subsequent year): $375 (new respondents); $38 (updates).

Estimated Total First Extension Year Burden: $11,250 (new respondents); $4,750 (updates).

Estimated Total Subsequent Year Annual Burden: $11,250 (new respondents); $4,750 (updates).

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 purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmitting information.

Authority: 20 U.S.C. 5601–5609.

Dated the 22nd day of August 2005.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 05–16985 Filed 8–25–05; 8:45 am]

BILLING CODE 6820–FN–P

* The actual cost estimate for this information collection may be less because this hourly rate is what is paid for services as a neutral and necessarily is set by the neutral to factor in time spent in the administration of the neutral's business and overhead costs. Indeed, fully burdened labor rates for ''professional specialty and technical'' occupations from Bureau of Labor Statistics tables indicate that an hourly rate as low as $36 may be appropriate.

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: September 12, 2005, 1–5 p.m.; September 13, 2005, 8 a.m.–8 p.m.; September 14, 2005, 8 a.m.–3:30 p.m.

Place: Synchrotron Radiation Center, 3731 Schneider Drive, Stoughton, WI 53589.

Type of Meeting: Partially closed.

Contact Person: Dr. Guebre X. Tessema, Program Director, National Facilities Programs, Division of Materials Research, room 1080, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone (703) 292–4935.

Purpose of Meeting: To provide advice and recommendations concerning a renewal proposal submitted to NSF for financial support for the Synchrotron Radiation Center at Wisconsin.

Agenda

Monday, September 12 (at PSL Conference Room)

1 p.m.–2 p.m. Closed—Executive Session

2 p.m.–6 p.m. Open—Tour of SRC, with User Presentations Welcome; Introduction; Discussion

Tuesday, September 13

8:30 a.m.–12:10 p.m. Open—Overview of Programs

12:10 p.m.–1 p.m. Closed—Executive Session

1 p.m.–5 p.m. Open—Review; User Research; Safety; Education and Outreach; Beamlines and Instrumentation; Plans for the Future; Budget

5 p.m.–6:30 p.m. Closed—Executive Session

Wednesday, September 14

8:30 a.m.–1:30 p.m. Closed—Meeting with Institutional Representatives; Review and Prepare Site Visit Report

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 23, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–17039 Filed 8–25–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08838]

Notice of Withdrawal of License Amendment Request From the Department of the Army, U.S. Army Garrison, Rock Island Arsenal, Rock Island, IL

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of withdrawal of license amendment request by the Department of the Army (Army or licensee) for its Jefferson Proving Ground (JPG) site.

FOR FURTHER INFORMATION CONTACT: Tom McLaughlin, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–5869; fax number: (301) 415–5398; e-mail: *tgm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 22, 2003, the Nuclear Regulatory Commission (NRC) Staff received a request from the Army for a license amendment that would create a 5-year renewable possession-only license (5-year POLA) for its JPG site. On October 28, 2003, the NRC Staff published a Notice of Consideration of Amendment Request for the Jefferson Proving Ground Site and Opportunity for a Hearing in the **Federal Register**. On May 25, 2005, the Army submitted a superseding license amendment request for an alternate schedule (alternate schedule request) for decommissioning JPG. On June 16, 2005, the Staff accepted the alternate schedule request for review. On June 27, 2005, the Staff published A Notice of Consideration of Amendment Request for an Alternate Decommissioning Schedule and Opportunity to Request a Hearing in the **Federal Register**. On July 19, 2005, the Army formally withdrew its request for a 5-year POLA for JPG. Thus, the Staff has discontinued its review of the 5-year POLA.

II. Further Information

Documents related to this action, including the withdrawal letter for the 5-year POLA and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: ML032731017 for the September 2003 request from the Army; ML032930189 for the NRC **Federal Register** notice for this action; ML051520319 for the Army's May 2005 request for an alternate decommissioning schedule; ML051640102 for the Staff's June 2005 acceptance of the Army's request for review; ML051660038 for the June 2005 NRC **Federal Register** notice; and ML052130480 for the July 2005 withdrawal letter from the Army. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, located in O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 19th day of August, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director Division of Waste Management and Environment, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4685 Filed 8–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of an amendment to Facility Operating License No. 290, issued to Florida Power Corporation (the licensee, also doing business as Progress Energy-Florida,) for operation of the Crystal River Unit 3 (CR–3) Nuclear Generating Plant located in Citrus County, FL.

The proposed amendment would allow the licensee to utilize a probabilistic methodology to determine the contribution to main steamline break (MSLB) leakage rates for the once-through steam generator (OTSG) from the tube end crack (TEC) alternate repair criteria (ARC) described in CR–3 Improved Technical Specification (ITS) 5.6.2.10.2.f. This amendment revision involves a change to ITS 5.6.2.10.2.f to incorporate the basis of the proposed probabilistic methodology and the method and technical justification for projecting the TEC leakage that may develop during the next operating cycle following each inservice inspection of the CR–3 OTSGs. This notice supercedes the previous notice dated March 15, 2005 (70 FR 12746).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This LAR [license amendment request] proposes to change the method to determine the projected MSLB leakage rates for TEC. Potential leakage from OTSG tubes, including leakage contribution from TEC, is bounded by the MSLB evaluation presented in the CR–3 Final Safety Analysis Report (FSAR) and testing performed during the development of Topical Report BAW–2346P, Revision 0. The inspection required by the ARC will continue to be performed as required by CR–3 ITS 5.6.2.10. This inspection provides continuous monitoring of tubes with TEC indications remaining in service, and ensures that degradation of new tubes containing TEC indications is detected. The proposed change in method to determine MSLB leakage rates for TEC and the addition of a method to project the TEC leakage that may develop during the next operating cycle do not change any accident initiators.

2. Does not create the possibility of a new or different type of accident from any accident previously evaluated.

This LAR proposes to change the method to determine the projected MSLB leakage rates for TEC and the addition of a method to project the TEC leakage that may develop during the next operating cycle. The changes introduce no new failure modes or accident scenarios. The proposed changes do not change the assumptions made in Topical Report BAW–2346P, Revision 0, which demonstrated structural and leakage integrity for all normal operating and accident conditions for CR–3. The addition of a method to project the TEC leakage provides an additional means to monitor the initiation of TEC. The design and operational characteristics of the OTSGs are not impacted by the use of a probabilistic methodology to determine MSLB leakage rates.

3. Does not involve a significant reduction in the margin of safety.

This LAR proposes to change the method to determine the projected MSLB leakage rates for TEC and the addition of a method to project the TEC leakage that may develop during the next operating cycle. The resulting leakage estimates will be lower than the estimates from the old method. However, the estimates from the proposed method will be more realistic and do not impact the acceptance criteria. The methodology relies on the same accident analyses described in Topical Report BAW–2346P, Revision 0, and License Amendment Request #249, Revision 0, and utilizes the same leakage test data and leakage limit. The CR–3 FSAR analyzed accident scenarios are not affected by the change and remain bounding. The limits established in CR–3 ITS 3.4.12 and 5.6.2.10.2.f have not been changed. The addition of a method to project the TEC leakage that may develop during the next operating cycle provides an additional means to monitor the initiation of TEC. Therefore, the proposed change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-

day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's public document room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularly the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(I)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Services Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated August 12, 2005, which is available for public inspection at the Commission's 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, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of August, 2005.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4684 Filed 8–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–05–007]

In the Matter of Joseph Guariglia; Confirmatory Order (Effective Immediately)

I

Mr. Joseph Guariglia (Mr. Guariglia) is employed by Nine Mile Point Nuclear Station, LLC, at the Nine Mile Point Nuclear Station. The facility is located in Lycoming, NY. In June 2000, Mr. Guariglia was a fire protection supervisor at the facility.

II

Following the receipt of information in January 2004, an investigation was initiated by the NRC's Office of Investigations (OI), Region I, on February 3, 2004, at the Nine Mile Point Nuclear Station. This investigation was initiated to determine whether Mr. Guariglia deliberately violated conditions of the Nine Mile Point Unit 2 license by compromising an unannounced fire drill in June 2000. Based on the evidence developed during its investigation, OI substantiated that Mr. Guariglia deliberately compromised the unannounced fire drill in June 2000. Mr. Guariglia was informed of the NRC finding in a letter dated March 18, 2005.

III

In response to the NRC's March 18, 2005 letter, Mr. Guariglia requested the use of Alternative Dispute Resolution (ADR) to resolve this matter. ADR is a process in which a neutral mediator, with no decision-making authority, assisted the NRC and Mr. Guariglia to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. An ADR session was held between Mr. Guariglia and the NRC in Philadelphia, PA, on June 22, 2005, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. During that ADR session, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

1. The NRC determined that a violation occurred when an unannounced fire drill at Nine Mile Point Unit 2 was compromised in June 2000. This was contrary to technical specifications and 10 CFR Part 50, Appendix R, which require that persons planning and authorizing an unannounced fire drill shall ensure that the responding shift fire brigade members are not aware that a fire drill is being planned until it is begun.

2. The NRC maintains that Mr. Guariglia deliberately compromised the fire drill when he called the fire brigade leader to inform him of its time and location. Because Mr. Guariglia's deliberate actions placed Nine Mile Point 2 in violation of NRC requirements, Mr. Guariglia was in violation of 10 CFR 50.5. Mr. Guariglia maintains that he does not recall the specifics associated with this fire drill. However, in light of the evidence available, Mr. Guariglia agreed that the fire drill was compromised and agreed that he was in violation of 10 CFR 50.5.

3. Mr. Guariglia, subsequent to the identification of this violation, will take actions to assure that he learned from this violation and provide the NRC with assurance that it will not recur. These actions include (a) writing an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions and (b) prior to December 31, 2005, participating in a stand-down meeting with appropriate fire protection staff and describing the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.

4. In light of Mr. Guariglia's agreement to Items 1 and 2 and the actions he will take as described in Item 3, the NRC agrees to issue a Notice of Violation without a specified severity level, to Mr. Guariglia. The NRC will place the Notice of Violation, which will be publically available in ADAMS, on the NRC ''Significant Enforcement Actions—Individuals'' website. The Notice of Violation will be placed on the ''Significant Enforcement Actions—Individuals'' Web site no longer than 1 year.

5. Mr. Guariglia agreed to issuance of a Confirmatory Order confirming this agreement.

IV

Since Mr. Guariglia has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that Mr. Guariglia's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above and Mr. Guariglia's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *It is hereby ordered, that* prior to December 31, 2005:

1. Mr. Guariglia shall write an article to share with the Constellation fleet that explains the importance of following procedural requirements, maintaining the integrity of unannounced fire drills, and maintaining a questioning attitude to verify and validate decisions.

2. Mr. Guariglia shall participate in a stand-down meeting with appropriate fire protection staff and describe the lessons learned from the compromised fire drill and the importance of raising concerns when an issue does not comply with requirements.

3. Mr. Guariglia shall notify the NRC, in writing, within 30 days of completion of the actions described in Items 1 and 2 above.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Guariglia of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Guariglia, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted

to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to Mr. Guariglia. Because Mr. Guariglia's home address has been deleted pursuant to 10 CFR 2.390, his copy should be provided to the NRC Office of Enforcement who will forward it to Mr. Guariglia. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel by means of facsimile transmission to 301–415–3725 or e-mail to *OGCMailCenter@nrc.gov.* If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained. An answer or a request for a hearing shall not stay the effectiveness date of this Order.

Dated this 18th day of August, 2005.

For the Nuclear Regulatory Commission.

Michael Johnson,

Director, Office of Enforcement.

[FR Doc. E5–4686 Filed 8–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 72–17]

Portland General Electric Company, Trojan Nuclear Plant, Independent Spent Fuel Storage Installation; Notice of Consideration of Approval of Proposed Corporate Restructuring and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of approval of proposed corporate restructuring and opportunity for hearing.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering the issuance of an order under 10 CFR 72.50 approving the indirect transfer of Special Nuclear Materials (SNM) License No. SNM–2509 for the Trojan Independent Spent Fuel Storage Installation (ISFSI). The indirect transfer has been requested by Portland General Electric Company (PGE) and Stephen Forbes Cooper, LLC. (SFC), as Disbursing Agent on behalf of the Reserve for Disputed Claims (Reserve), to facilitate implementation of the transfer of 100% of PGE's common stock held by the Enron Corporation (Enron) to the creditors of Enron. This is to be done by canceling the existing PGE common stock held by Enron and by authorizing and issuing to Enron's creditors new PGE common stock.

The issuance of the new PGE common stock will not change the status as NRC licensee of the Trojan ISFSI, and there will be no direct transfer of the Trojan ISFSI license. Control of the 10 CFR Part 72 license for the Trojan ISFSI, now held by PGE and its co-owners, will remain with PGE and the same co-owners, and will not be affected by the issuance of the new PGE common stock. Issuance of the new PGE common stock will not affect PGE's technical and financial qualifications and its ability to continue funding its share of the costs of operating, maintaining, and ultimately decommissioning the Trojan ISFSI. No physical changes to the Trojan ISFSI or operational changes are being proposed in the application.

Pursuant to 10 CFR 72.50, no license, or any part included in the license issued under 10 CFR Part 72 for an ISFSI shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person unless the Commission gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the indirect license transfer application, are discussed below.

Within 20 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of approval of the indirect transfer for the subject ISFSI operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's rules of practice set forth in Subpart C and Subpart M, ''Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 20 days after the date of publication of this notice, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible

effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii). A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* Requests for a hearing and petitions for leave to intervene should be served upon Mr. Stephen M. Quennoz, Vice President, Power Supply/Generation, Portland General Electric Company, Trojan Nuclear Power Plant, 71760 Columbia River Highway, Rainier, Oregon 97048, Samuel Behrends IV, LeBoeuf, Lamb, Greene & MacRae, L.L.P., 1875 Connecticut Avenue, NW., Suite 1200, Washington, DC 20009–5728, phone: (202) 986–8000, facsimile: (202) 986–8102, and Disputed Claims Reserve, c/o Stephen Forbes Cooper, LLC., 101 Eisenhower Parkway, Roseland, New Jersey 07068.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the presiding officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 26, 2005, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

Further Information: For further details with respect to this action, see the application dated July 12, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 16th day of August, 2005.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–4682 Filed 8–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Standard Review Plan (NUREG–0800), Chapter 13.0, ''Conduct of Operations,'' Sections 13.1.2–13.1–3, ''Operating Organization,'' Revision 5, and Associated NUREG–1791, ''Guidance for Assessing Exemption Requests From The Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m),'' Dated July, 2005: Availability of NUREG Documents

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of two NUREG documents: (1) NUREG–0800, Standard Review Plan, Chapter 13.0, ''Conduct of Operations,'' Sections 13.1–2, 13.1–3, ''Operating Organization,'' Rev. 5, dated July 2005; and, (2) NUREG–1791, ''Guidance for Assessing Exemption Requests From the Nuclear Power Plant Licensed Operator Staffing Requirements Specified in 10 CFR 50.54(m),'' dated July, 2005.

ADDRESSES: Copies of these NUREG documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; *http://www.access.gpo.gov/su_docs;* 202–512–1800 or The National Technical Information Service, Springfield, Virginia 22161–0002; *http://www.ntis.gov;* 1–800–533–6847 or, locally, 703–805–6000.

Copies of these documents are also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. As of November 1, 1999, you

may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html.*

A free single copy of these NUREG documents, to the extent of supply, may be requested by writing to Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov.*

Some publications in the NUREG series that are posted at NRC's Web site address *http://www.nrc.gov/NRC/NUREGS/indexnum.html* are updated regularly and may differ from the last printed version.

FOR FURTHER INFORMATION CONTACT: James P. Bongarra, Jr., Division of Inspection Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–1046. E-mail: *JXB@nrc.gov.*

SUPPLEMENTARY INFORMATION:

On September 1, 2004 (69 FR 53472–53473), NRC announced the availability of the two NUREG documents, and requested comments on them. The NRC staff considered all of the comments, including constructive suggestions to improve the documents, in the preparation of the revised NUREG documents.

The final versions of the two NUREG documents are now available for use by applicants, licensees, NRC reviewers, and other NRC staff. The new revision of the Standard Review Plan supersedes the previous version of that document.

Small Business Regulatory Enforcement Fairness Act

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

Note: The Small Business Regulatory Enforcement Fairness Act statement is not used for draft NUREGs. The law applies only to final agency actions.

Dated at Rockville, Maryland, this 19th day of August, 2005.

For the Nuclear Regulatory Commission.

Patrick L. Hiland,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4680 Filed 8–25–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings; OMB 3220–0107.

Under Section 2 of the Railroad Retirement Act (RRA), a railroad employee's retirement annuity or an annuity paid to the spouse of a railroad employee is subject to work deductions in the Tier II component of the annuity and any employee supplemental annuity for any month in which the annuitant works for a Last Pre-Retirement Non-Railroad Employer (LPE). LPE is defined as the last person, company, or institution, other than a railroad employer, that employed an employee or spouse annuitant. In addition, the employee, spouse or divorced spouse Tier I annuity benefit is subject to work deductions under Section 2(F)(1) of the RRA for earnings from any non-railroad employer that are over the annual exempt amount. The regulations pertaining to non-payment of annuities by reason of work are contained in 20 CFR 230.1 and 230.2.

The RRB utilizes Form RL–231–F, Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings, to obtain the information needed for determining if any work deductions should be applied because an annuitant worked in non-railroad employment after the annuity beginning date. One response is requested of each respondent. Completion is voluntary. The RRB is proposing no changes to Form RL–231–F.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
RL–231–F	300	30	150
Total	300		150

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–16975 Filed 8–25–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28018]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 22, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 16, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 16, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–9123)

Entergy Corporation (''Entergy''), a registered holding company, 639 Loyola Avenue, New Orleans, LA 70113; and Entergy's current and future nonutility companies (''Applicants'') have filed a post-effective amendment (''Declaration'') under sections 6(a), 7, and 12(b) of the Act and rules 45, and 54 under the Act.

Applicants request a supplemental order from the Commission for Entergy and its existing and future nonutility subsidiary companies to issue guarantees and provide other forms of credit support, as described below (collectively, ''Guarantees''). The Guarantees would be issued to or for the benefit of Entergy's nonutility subsidiaries which are: (a) ''New Subsidiaries,'' [1] (b) ''exempt wholesale generators'' (''EWGs'') as defined in Section 32(a) of the Act, (c) ''foreign utility companies'' (''FUCOs'') as defined in Section 33(2) of the Act, (EWGs and FUCOs collectively referred to as ''Exempt Projects''), (d) ''exempt telecommunication companies'' (''ETCs'') as defined in Section 34(a) of the Act, (e) other subsidiary companies of Entergy (including ''operating and management companies organized for the purpose of providing operations and maintenance services, ''O&M Subs'') and Entergy Power, Inc. (''EPI''), a company that markets and sells its electric generating capacity and energy at wholesale, principally to non-associate customers that are or may be authorized or permitted by rule, regulation or order of the Commission under the Act to engage in other businesses (''Authorized Subsidiary Companies''),[2] and (f) ''energy-related companies,'' as defined in Rule 58 under the Act (''Energy-related Companies''). New Subsidiaries, Exempt Projects, ETCs, Energy-related Companies and Authorized Subsidiary Companies are collectively referred to as Nonutility Companies.

In order to further facilitate the development, acquisition and ownership by Entergy of interests in Exempt Projects and other Nonutility Companies, as authorized or permitted under the Act from time to time, to the extent the transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, Entergy and the Nonutility Companies (exclusive of EPI) request authority to issue Guarantees to or for the benefit of Nonutility Companies [3] from time to time through February 8, 2006 (the ''Authorization Period''), in an aggregate amount not to exceed $3 billion at any one time outstanding (including any Guarantees previously issued and outstanding under the prior order) [4] (the ''Aggregate Authorization''). The amount of a Guarantee shall not reduce the Aggregate Authorization to the extent that the provision of the Guarantee is exempt from the Act or is otherwise authorized or permitted by rule or regulation of the Commission issued under the Act.

Guarantees may take the form of Entergy or a Nonutility Company agreeing to guarantee, undertake reimbursement obligations, assume liabilities or other obligations in respect of or act as surety on bonds, letters of credit, evidences of indebtedness, equity commitments, power purchase agreements, leases, liquidated damages provisions, and other obligations undertaken by Entergy's associate Nonutility Companies. For example, the associate companies may be called upon to furnish various types of bonds as security, including bid bonds, performance bonds, and material and payment bonds. Guarantees may also be necessary or desirable to satisfy the requirements of lenders or other project participants under financing documents or other project agreements to which an associate Nonutility Company of Entergy is or will become a party (including with respect to the provision of construction, interim or permanent debt or equity financing). These forms of credit enhancements are typical in the marketplace, and would significantly benefit Entergy's investments in

[1] New Subsidiaries are defined in the December 20, 2002 order (HCAR No. 27626) as direct or indirect subsidiary companies of Entergy organized (a) to engage in development activities and/or (b) to hold, acquire and/or finance the acquisition of one or more subsidiary companies of Entergy which are (i) ''exempt wholesale generators'', (ii) ''foreign utility companies'', (iii) ''exempt telecommunications companies'', (iv) ''energy-related companies'', (v) ''Authorized Subsidiary Companies'', (vi) other ''New Subsidiaries'' and/or (vii) Rule 58 Companies, as these terms are defined in the order.

[2] The Authorized Subsidiary Companies currently include, but are not limited to, Entergy Enterprises, Inc., EPI, Entergy Nuclear, Inc., Entergy Nuclear Operations, Inc., Entergy Operations Services, Inc., Entergy Operations Services North Carolina, Inc., Entergy Global Power Operations Corporation and Entergy Power Operations U.S., Inc.

[3] EPI holds undivided ownership interests in certain non-exempt electric generating stations and, as discussed above, is engaged in the business of generating and selling its capacity and related energy, at wholesale, principally to non-associate bulk power producers on negotiated (*i.e.* market based) terms and conditions. Therefore, EPI is a ''public-utility company'' for purposes of the Act.

[4] As of March 31, 2005, the aggregate amount of guarantees outstanding under the prior order is approximately $1.25 billion.

nonutility companies by, among other things, facilitating the making of proposals in respect of investments in nonutility companies, and helping to reduce the cost of necessary bonds, sureties, and other credit support. The terms and conditions of Guarantees would continue to be established at arm's length, based upon market conditions.

Any Guarantees provided by Entergy to Exempt Projects would be subject to the limitation on aggregate investment in EWGs and FUCOs set forth in Rule 53(a), as modified by the Commission's authorization in File No. 70–9049. Specifically, in the absence of further authorization, Entergy would only issue Guarantees to Exempt Projects to the extent that the amount of any the Guarantee, when added to Entergy's aggregate investment in Exempt Projects, would not exceed 100% of Entergy's consolidated retained earnings. Any Guarantees provided to Energy-related Companies would be subject to the limitation on ''aggregate investment'' in energy-related companies set forth in Rule 58.

Entergy and any Nonutility Company issuing Guarantees pursuant to the authorization requested in this filing may elect to charge each Nonutility Company a fee for any Guarantee provided on its behalf, provided that the fee does not exceed the cost of obtaining the liquidity necessary to perform the Guarantee (for example, bank line commitment fees or letter of credit fees) for the period of time the Guarantee remains outstanding. Guarantees may, in some cases, be provided to support obligations of Nonutility Companies that are not capable of exact quantification or are subject to varying quantification. In that event, Entergy or the Nonutility Company issuing the Guarantee would determine the exposure under the Guarantee for purposes of measuring compliance with the Aggregate Authorization limit by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. Any estimates would be made in accordance with generally accepted accounting principles, and would be reevaluated periodically.

Other Authorization Parameters

1. Common Equity Ratio

Entergy represents that it will at all times during the Authorization Period maintain common equity (as reflected in the most recent Quarterly Report on Form 10–Q or Annual Report on Form 10–K filed with the Commission adjusted to reflect changes in capitalization since the applicable balance sheet date) of at least 30% of its consolidated capitalization. The term ''consolidated capitalization'' is defined to include, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss, and/or treasury stock), minority interests, preferred stock, preferred securities, equity linked securities, long-term debt, short-term debt and current maturities.

2. Investment Grade Rating

With respect to the securities issuance authority proposed in this Declaration: (a) Within four business days after the occurrence of a Ratings Event,[5] Entergy would notify the Commission of its occurrence (by means of a letter, via fax, e-mail or overnight mail to the Office of Public Utility Regulation); and (b) within 30 days after the occurrence of a Ratings Event, Entergy would submit a post-effective amendment to this Declaration explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Entergy and/or the other Applicants to issue such securities, so long as Applicants continues to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this Declaration). Furthermore, no securities authorized as a result of this Declaration will be issued any Applicant following the 60th day after a Ratings Event if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction through the remainder of the Authorization Period over the issuance of any such security that Applicants are prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

[5] A ''Ratings Event'' will occur if, during the Authorization Period, (i) an security issued by Entergy upon original issuance, if rated, is rated below investment grade; or (ii) any outstanding security of Entergy, that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4687 Filed 8–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52312; File No. SR–Amex–2005–063]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX Options

August 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2005, 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 by the Amex. 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 eliminate position and exercise limits for options on the Nasdaq-100 Index (''NDX''). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate position and exercise limits for options on the NDX, a broad-based securities index.[3] In August 2002, the Commission granted permanent approval to an Amex pilot program that eliminated position and exercise limits for options on the Major Market Index (the ''XMI'') and the Institutional Index (the ''XII'').[4] For similar reasons, the Exchange believes that position and exercise limits for NDX options should equally be eliminated.

In the XMI/XII Permanent Approval Order, the Commission cited several reasons for allowing the Exchange to eliminate position and exercise limits for XMI and XII options. First, the Commission expressed its belief that the enormous capitalization of these indexes and the deep liquid markets for the securities underlying each of these indexes significantly reduced concerns of market manipulation or disruption in the underlying markets. The Amex believes that the NDX is similarly capitalized. As of June 1, 2005, the market capitalization of XMI and XII was $2.20 trillion and $6.65 trillion, respectively, while NDX had a market capitalization of $1.86 trillion. In addition, the average daily trading volume (''ADTV''), in aggregate, for the component securities of the XMI, XII, and NDX from January 1, 2005 through May 31, 2005 was 113.9, 524.8, and 425.8 million shares, respectively. During the same time period, the ADTV for an average single component security of the XMI, XII, and NDX was 5.87, 7.014, and 4.25 million shares, respectively. The ADTV for options on the XMI[5] and NDX was 948 and 45,820 contracts, respectively.

Second, the Commission noted in the XMI/XII Permanent Approval Order that the financial requirements imposed by both the Exchange and the Commission help to address concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in options on these indexes. These financial requirements equally apply to NDX options. Under Amex 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[6] to the extent of any resulting margin deficiency.[7]

The Amex believes that the Commission in the XMI/XII Permanent Approval Order relied substantially 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 on XMI and XII options. The Exchange represents that it monitors the trading in NDX options in the same manner as trading in XMI options and that the current Amex surveillance procedures are adequate to continue monitoring NDX options. In addition, the Exchange proposes to impose a reporting requirement on Amex members (other than Amex specialists and registered options traders) and member organizations that trade NDX options. This reporting requirement, which is currently imposed on members and member organizations that trade XMI options, would require each member or member organization that maintains in excess of 100,000 NDX option contracts on the same side of the market, for its own accounts or for the account of customer, 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.[8] The Exchange may also specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[9]

For consistency, the Exchange also proposes to amend its rules relating to the trading of FLEX broad-based index options to reflect that there shall be no position or exercise limits on NDX options and to adopt the 100,000 contract reporting requirement for NDX FLEX options.[10] Thus, the provisions in Amex Rule 906G(b) applicable to XMI FLEX options shall also apply to NDX FLEX options.[11]

The Exchange believes that eliminating position and exercise limits for NDX options and FLEX options is consistent with Amex rules relating to similar broad-based indexes and also allows Amex members and their customers greater hedging and investment opportunities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] As described by Amex, the Nasdaq-100 Index is a modified capitalization-weighted index of the 100 largest and most active non-financial domestic and international issues listed on the Nasdaq Stock Market, Inc. A single component security is prohibited from representing more than 24% of the weight of the Index. The Index was developed with a base value of 125 as of February 1, 1985. *See* Securities Act Exchange Release No. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (File No. SR–Amex–2005–038) (options on the Nasdaq–100 Indexes). *See also* Securities Exchange Act Release Nos. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (File No. SR–ISE–2005–01); 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (SR–CBOE–93–42); and 37659 (September 6, 1996), 61 FR 48722 (September 16, 1996) (SR–CBOE–96–40).

[4] *See* Securities Exchange Act Release No. 46393 (August 21, 2002), 67 FR 55289 (August 28, 2002) (''XMI/XII Permanent Approval Order'').

[5] Options on the XII are no longer listed and traded on the Exchange.

[6] 17 CFR 240.15c3–1.

[7] *See* Commentary .03 to Amex Rule 904C. Clarified as per telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 16, 2005 (''Telephone Conversation of August 16, 2005'').

[8] *See* Amex Rule 906C.

[9] Pursuant to Amex Rule 906, as referenced in Amex Rule 906C(a). Telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 18, 2005.

[10] *See* Amex Rules 906G and 907G. The text of Rule 907G is not amended by this proposed rule change.

[11] This would include the authority of the Exchange to impose additional margin on accounts maintaining underhedged positions in these options. Telephone Conversation of August 16, 2005, *supra* note 7.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–Amex–2005–063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–Amex–2005–063 and should be submitted on or before September 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4658 Filed 8–25–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52313; File No. SR–CBOE–2005–41]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX Options

August 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 its rules to eliminate position and exercise limits for options on the Nasdaq 100 Index (''NDX''). The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to eliminate position and exercise limits for options on the NDX, a broad-based securities index. In November 2001, the Commission granted permanent approval to a CBOE pilot program that eliminated position and exercise limits for options on the S&P 500 Index (''SPX''), the S&P 100 Index (''OEX''), and the Dow Jones Industrial Average (''DJX'').[3] The Exchange believes that the circumstances and considerations relied upon in approving the elimination of position and exercise limits for options on those broad-based indexes equally apply to this proposal relating to NDX position and exercise limits.

In the Permanent Approval Order relating to SPX, OEX, and DJX options, the Commission cited several reasons for allowing the Exchange to eliminate position and exercise limits for these options. First, the Commission expressed its belief that the enormous capitalization of each index and the deep liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruptions in the underlying markets.[4] The Commission previously had also noted the active trading volume for options on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order granting permanent approval to the elimination of position and exercise limits on the SPX, OEX, and DJX) (''Permanent Approval Order''). *See also* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the original pilot program) (''Pilot Approval Order'').

[4] *See* Permanent Approval Order, *supra* note 3.

respective indexes.[5] The CBOE believes that NDX shares these factors in common with the SPX, OEX, and DJX. As of the date of this rule filing, the approximate market capitalizations of the SPX, OEX, and DJX were $10.97 trillion, $5.94 trillion, and $3.7 trillion, respectively. The average daily trading volumes (''ADTVs'') for all underlying components of the indexes were 1,250, 560, and 250 million shares, respectively, and the ADTV for options on the indexes were 253,981 contracts, 72,809 contracts, and 30,938 contracts, respectively.[6] The CBOE believes that the NDX has very comparable characteristics. The market capitalization for the NDX is $1.84 trillion dollars, the ADTV for the underlying securities is 420 million shares, and the options ADTV is 44,008 contracts.

Secondly, with respect to SPX, OEX, and DJX options, the Commission noted that the financial requirements imposed by both the Exchange and the Commission help to address concerns that a CBOE member or its customer(s) may try to maintain an inordinately large unhedged position in the indexes.[7] These identical financial requirements also apply to NDX options. Under CBOE rules, the Exchange 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[8] to the extent of any resulting margin deficiency.[9]

Finally, the Exchange believes that with regard to SPX, OEX, and DJX options, the Commission relied substantially 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 these indexes. The Exchange represents that it monitors trading in NDX options in much the same manner as trading in SPX, OEX, and DJX options and that the current CBOE surveillance procedures are more than adequate to continue monitoring NDX options. Additionally, the Exchange proposes to impose a reporting requirement on CBOE members (other than CBOE market-makers) and member organizations that trade NDX options. This reporting requirement, which is currently imposed on members and member organizations that trade SPX and OEX options, would require each member or member organization that maintains in excess of 100,000 NDX contracts on the same side of the market, for its own account or for the account of a customer, 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's Department of Market Regulation.[10] The Exchange also may specify other reporting requirements, as well as the limit at which the reporting requirement may be triggered.[11]

In the interest of consistency, the Exchange also proposes to amend Exchange rules relating to the trading of FLEX broad-based index options to reflect that there shall be no exercise or position limits on NDX options and to adopt the 100,000 contract reporting requirement for NDX FLEX options.[12] Thus, the provisions in CBOE Rule 24A.7(b) applicable specifically to SPX and OEX FLEX options shall also apply to NDX FLEX options.[13]

The Exchange believes that eliminating position and exercise limits for NDX options and FLEX options is consistent with CBOE Rules relating to similar broad-based indexes and also allows CBOE members and their customers greater hedging and investment opportunities.

2. Statutory Basis

By placing position and exercise limits for NDX options on an equal basis with other similar broad-based index options, the Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–CBOE–2005–41. 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

[5] *See* Pilot Approval Order, *supra* note 3.

[6] ADTVs are calculated over the previous three months of trading.

[7] *See* Permanent Approval Order, *supra* note 3.

[8] 17 CFR 240.15c3–1.

[9] *See* Interpretation and Policy .04 to CBOE Rule 24.4. Clarified as per telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and James M. Flynn, Attorney II, Legal Division, CBOE, on August 12, 2005 (''Telephone Conversation of August 12, 2005'').

[10] *See* Interpretation and Policy .03 to CBOE Rule 24.4.

[11] *Id.*

[12] *See* CBOE Rules 24A.7 and 24A.8. The text of Rule 24A.8 is not amended by this proposed rule change.

[13] This would include the authority of the Exchange to impose additional margin on accounts maintaining underhedged positions in these options. Telephone Conversation of August 12, 2005, *supra* note.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2005–41 and should be submitted on or before September 16, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–16963 Filed 8–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52209A; File No. SR–NASD–2004–165]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to NASD Rule 2790; Corrected

August 22, 2005.

Correction

In Part III.D. of Release 34–52209, issued August 4, 2005,[1] the Commission is replacing the following sentence: ''The NASD suggests that the proposed rule change become effective 45 days after approval by the Commission and the Commission believes that this is reasonable.''

with:

''The NASD will announce the effective date of the proposed rule change in a *Notice to Members* (''*NtM*'') to be published no later than 60 days following Commission approval. The effective date will be not more than 30 days following publication of the *NtM* announcing Commission approval and the Commission believes this is reasonable.''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–16956 Filed 8–25–05; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

[1] *See* Securities Exchange Act Release No. 52209 (August 4, 2005), 70 FR 46557 (August 10, 2005).

[2] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5175]

30-Day Notice of Proposed Information Collection: DS Form 4502, Fulbright Teacher Exchange Program Application Package, OMB Control No. 1405–0114

ACTION: Notice of request for public comments and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Fulbright Teacher Exchange Program Application Package.
- *OMB Control Number:* 1405–0114.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* Office of Global Educational Programs (ECA/A/S).
- *Form Numbers:* DS–4502.
- *Respondents:* Educators desiring to participate in the Fulbright Teacher Exchange Program.
- *Estimated Number of Respondents:* 950.
- *Estimated Number of Responses:* 950.
- *Average Hours Per Response:* 3.
- *Total Estimated Burden:* 2850.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 30 days from August 26, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jennifer Gibson, Branch Chief, or Ruta Chagnon, Program Officer (ECA/A/S/X); Department of State, SA–44, Room 349, 301 Fourth Street, SW., Washington, DC 20547, who may be reached at 202–619–4555/6.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Under the Mutual Educational and Cultural Exchange (Fulbright-Hays) Act of 1961, as amended, the Fulbright Teacher Exchange Program offers six-week, semester, and academic-year exchanges and seminar opportunities to U.S. educators. The data collected is used to determine whether prospective candidates are qualified for participation in the program.

Methodology: Applicants submit either a paper or electronic application to ECA. The receiving office inputs the data into a database for retention and program use as appropriate.

Dated: July 17, 2005.

Cathy Chikes,

Executive Director, Office of Global Educational Programs, Department of State.

[FR Doc. 05–17023 Filed 8–25–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5163]

Culturally Significant Object Imported for Exhibition Determinations: ''Monet's Antibes''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition, ''Monet's Antibes,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the J. Paul Getty Museum, Los Angeles, California, from on or about September 2, 2005, to on or about January 31, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 22, 2005.

Travis Horel,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Department of State.

[FR Doc. 05–17015 Filed 8–25–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 12, 2005

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–22076.

Date Filed: August 8, 2005.

Parties: Members of the International Air Transport Association

Subject: Mail Vote 451—Resolution 010r TC3 0871—Japan, Korea-South East Asia, Special Passenger Amending Resolution between Japan and Russia (in Asia). Intended effective date: August 9, 2005.

Docket Number: OST–2005–22127.

Date Filed: August 11, 2005.

Parties: Members of the International Air Transport Association.

Subject: GVA/GEN/001/005 dated May 6, 2005 and GVA/GEN/002/005 dated June 28, 2005, *i.e.* Resolution 801r. Intended effective date: October 1, 2005.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–17004 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Land at March Inland Port, Riverside, CA

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of Request To Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of two parcels comprised of approximately 184.70 acres of airport property at March Inland Port, Riverside, California, from all restrictions of the surplus property agreement since the land is not needed for airport purposes. Reuse of the land for commercial/light industrial and environmental mitigation purposes represents a compatible land use. Disposal of the property will provide income for investment in airport improvements and development in accordance with the FAA Policy and Procedures Concerning the Use of Airport Revenue.

DATES: Comments must be received on or before September 26, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Federal Register Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Philip A. Rizzo, Executive Director, March Joint Powers Authority, PO Box 7480, Moreno Valley, California 92552.

FOR FURTHER INFORMATION CONTACT: Tony Garcia, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, telephone (310) 725–3634 and fax (310) 725–6849. The request to release airport property may be reviewed in person by appointment at this same location or at March Joint Powers Authority, Moreno Valley, California.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport's interest in surplus property.

The following is a brief overview of the request:

The March Joint Powers Authority (MJPA) requested a release from surplus property agreement obligations for approximately 184.70 acres of airport land consisting of two parcels at March Inland Port, Riverside, California. The property was originally conveyed to MJPA for airport purposes by the United States Air Force as a result of the realignment of the former March Air Force Base. The parcels are located northwest of the airport and separated from the airfield by Interstate 215. Consequently, the land is not contiguous or easily accessible to the airfield and cannot be used for aeronautical purposes. The request for release represents one of the steps contained within the corrective action plan that MJPA has undertaken to reestablish compliance with its Federal obligations. The plan includes an agreement stipulating that the land will be disposed of at its fair market value and the proceeds will only be used for airport purposes. Accordingly, the proceeds from the sale of the parcels have been committed to the purchase of noise mitigation land, for encroachment protection, and for airport improvement and development. The sale of one parcel will provide revenue for airport improvements. Redevelopment of this parcel for non-aeronautical purposes

will comply with local zoning and compatible land-use requirements. The other parcel was already sold to acquire noise compatibility land. The acquired land will remain undeveloped, but will still provide March Inland Port with revenue, which will be derived from the sale of multi-species habitat mitigation credits. The release will provide tangible benefits to the airport and serve the interest of civil aviation.

Issued in Hawthorne, California, on July 28, 2005.

George Aiken,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 05–16970 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Fresno Yosemite International Airport, Fresno, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Fresno for Fresno Yosemite International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 6, 2005.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, Federal Aviation Administration, Western Pacific Region, San Francisco Airports District Office, 831 Mitten Road, Suite 210, Burlingame, California 94010, Telephone: (650) 876–2778, extension 613.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fresno Yosemite International Airport and supplemental information dated April 20, 2005, are in compliance with applicable requirements of part 150, effective July 6, 2005. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by City of Fresno, California. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of part 150 includes: Figure 27 ''2004 Existing Conditions CNEL Contour,'' and Figure 28 ''2009 Five-Year Forecast Conditions CNEL Contours.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Community Noise Equivalent Level (CNEL) 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2004 are shown in Table 35. Estimates of the future residential population within the 2009 noise contours are shown in Table 36. Figure 11 displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Figures 32, 33, 34, 35, 36 and 37. The type and frequency of aircraft operations (including nighttime operations) for the year 2004 are found in Tables 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19. The type and frequency of aircraft operations (including nighttime operations) for the year 2009 are found in Tables 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on July 6, 2005.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs Division, APP–600, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Western-Pacific Region, San Francisco Airports District Office, 831 Mitten Roads, Burlingame, California 94010.

Kevin Meikle, Airport Development Manager, City of Fresno Airports, 4995 East Clinton Way, Fresno, California 93727–1525.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on July 6, 2005.

George Aiken,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 05–16969 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2005–22207]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on June 8, 2005.

DATES: Comments must be submitted before September 26, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 3037 Job Access and Reverse Commute Programs (*OMB Number: 2132–New*).

Abstract: 49 U.S.C. Section 3037 Job Access and Reverse Commute Program authorizes the Secretary of Transportation to make grants to State and local governments and public transportation authorities to transport welfare recipients and other low-income individuals to and from jobs and activities related to employment. Grant recipients are required to make information available to the public and to publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA also collects grantee performance information annually. This collection activity is performed by a Web-based contractor, who electronically collects the grantee information and develops JARC information tables as needed. The information submitted ensures FTA's compliance with applicable Federal laws and OMB Circular A–102.

Estimated Total Annual Burden: 78,609 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: August 22, 2005.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 05–16972 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–04–19854]

Pipeline Safety: Public Meeting on Integrity Management of Gas Distribution Pipelines

AGENCY: Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice; public meeting.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is sponsoring a public meeting on Enhancing Integrity Management of Gas Distribution Pipelines. The meeting will be held on September 21, 2005, in Dallas, Texas. At the meeting, PHMSA will discuss actions that have been underway this year to review the need for integrity management requirements for gas distribution pipelines. The meeting also will provide discussion on the use of Excess Flow Valves in gas distribution safety lines as a technique for mitigating the consequences of service line incidents, and will provide the public an opportunity to give comments.

DATES: The public meeting will be held on Wednesday, September 21, 2005, from 8 a.m. to 4:15 p.m.

ADDRESSES: The meeting is open to all. There is no cost to attend. The meeting will be held at the Westin Park Central Hotel, 12720 Merit Drive, Dallas, TX 75251. The phone number for reservations is 1–972–851–2037 or 1–800–Westin1.

FOR FURTHER INFORMATION CONTACT: Mike Israni, Office of Pipeline Safety, at 202–366–4571; *mike.israni@dot.gov,* regarding subject matter of this notice. For information regarding meeting logistics please contact Veronica Garrison at 202–366–4996, *veronica.garrison@dot.gov.*

SUPPLEMENTARY INFORMATION: This meeting follows a previous public meeting on this topic, held in Washington, DC, on December 16, 2004. This meeting will include briefings on the activities of a Distribution Integrity Management Phase 1 effort that is ongoing through 2005. This program involves a review of operating experience, current requirements, and practices. The Distribution Integrity Management Program (DIMP) team will develop information that PHMSA can consider in any subsequent rulemaking effort. The Phase 1 program involves work/study groups comprised of representatives of state pipeline safety regulators, the gas distribution industry, the public, and PHMSA. The preliminary agenda for this meeting includes briefings on the following topics:

- The need for improvement;
- Distinctions among gas distribution pipeline systems;
- Comments from the team of executives (industry, state regulators, and public) providing oversight of the Phase 1 program;
- The plan and process of the Phase 1 program; (including use of EFV as a technique for mitigating the consequences of service line incidents.)
- Major issues and approaches, including preliminary Phase 1 conclusions;
- Issues and cautions that must be considered in developing distribution integrity management requirements; and
- The views of industry and other stakeholders.

Need for Improvement

Pipeline accidents with significant consequences gathered attention in recent years and prompted pipeline safety program changes. Integrity management rules were promulgated for hazardous liquid pipelines (65 FR 75378; December 1, 2000) and for gas transmission pipelines (68 FR 69778; December 15, 2003). In testimony before the Congress on July 20, 2004, the Office of the Inspector General (OIG) reported that the number of incidents reported on distribution systems has consistently exceeded that on transmission systems. Also, the number of fatalities and injuries reported on distribution systems has consistently been much higher than for transmission systems. The prevalence of incidents, particularly those with consequences to people, underscores the need for regulators and stakeholders to pay additional attention to distribution pipeline integrity management. PHMSA agrees that safety issues posed by gas distribution pipelines need to be addressed through appropriate integrity management initiatives.

Differences in Gas Distribution Pipeline Systems

A plan for assuring integrity of gas distribution pipelines must consider the differences between transmission pipeline systems and distribution pipeline systems. Ensuring the integrity of distribution pipeline systems is different from doing so for transmission pipelines because:

- Most pipe in distribution pipeline systems is small diameter and operates at low pressure. Transmission pipelines are generally large diameter and high pressure.
- Distribution pipeline systems are a more complex network, with frequent branching and interconnections. Transmission pipelines generally run for many miles without such connections.
- Distribution pipeline systems include a range of materials, including a significant amount of plastic pipe. Transmission pipelines are generally constructed of steel.
- Distribution pipelines are usually difficult to take out of service for inspection without interrupting gas service to customers. Transmission pipelines often include loop lines and bypasses that allow individual sections of pipe to be removed from service temporarily.
- Distribution pipeline failures tend to occur as leaks. Gas can migrate underground, accumulating in areas remote from the leak so that fires and explosions occur away from the pipeline. Transmission pipelines tend to fail by rupture because of their high operating pressure. The fire and explosions on transmission lines occur on the pipeline.
- Distribution pipeline systems tend to be local, intrastate systems, which state regulators are responsible for regulating. A greater proportion of transmission pipelines are interstate systems, and Federal regulators play a much larger role regulating them.

Developing an Approach to Gas Distribution Integrity Management

Expanding integrity management for distribution systems beyond currently required practices requires a thorough understanding of costs and benefits. Following the previous public meeting, PHMSA has worked with a number of groups comprised of state pipeline regulators, pipeline operators, and representatives of the public to conduct analyses and evaluations in a number of areas that must be considered in developing any distribution integrity management requirements. These meetings were announced by a **Federal Register** notice on March 29, 2005 (70 FR 15988) and subsequent announcements on a Web site established specifically for this effort. The areas considered include:

- Identifying the principal threats to the integrity of distribution pipelines;
- Identifying requirements and practices that currently exist at the State and Federal levels that support management of these threats to integrity;
- Determining whether current requirements are written effectively to create opportunities and incentives for operators to use existing and developing technologies to support management of the integrity of distribution systems;
- Identifying whether opportunities exist for expedited development of new technologies supporting the assessment of gas distribution systems;
- Understanding practices beyond current requirements that are being used by operators and what the results are;
- Understanding whether there are requirements or approaches used by one or more States which are not included in Federal requirements but which have proven effective in managing the integrity of gas distribution systems; and,
- Identifying whether the opportunity exists to codify currently demonstrated effective integrity management practices in a national consensus standard.

The analyses and evaluations conducted by the work/study groups comprise Phase 1 of the PHMSA plan to develop integrity management requirements. Phase 1 is expected to be completed by the end of 2005. The Phase 1 results will support PHMSA and state regulators in making decisions regarding the nature of requirements that may be needed. Achieving increased integrity of distribution pipeline systems may involve Federal and/or State rulemaking, development of guidance for adoption by States, publication and promotion of best practices or national consensus standards, or some combination of these or other actions. PHMSA will use the results of Phase 1 to develop new requirements as part of Phase 2 of the PHMSA plan, which PHMSA expects to begin in early 2006.

During this meeting, persons involved in the Phase 1 program will share the scope of their ongoing work and their preliminary conclusions with the public. Representatives of various stakeholder groups will also share their perspective with attendees. PHMSA will collect comments and suggestions from members of the public attending this meeting to further inform the Phase 2 efforts to develop appropriate requirements.

Interested parties may find additional information regarding the previous public meeting in the docket (*http://dms.dot.gov*), then click on Simple Search and type in Docket No. 19854.

Visitors may access the Distribution Integrity Management Web site through the OPS home page (*http://ops.dot.gov*) by selecting ''Integrity Management'' and then ''Distribution Integrity Management''.

Issued in Washington, DC, on August 22, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–16966 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34743]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement entered into between UP and the BNSF Railway Company (BNSF), has agreed to grant temporary overhead trackage rights to BNSF over UP's rail line between Valley Junction, IL, UP milepost 0.00, and Rockview Junction, MO, UP milepost 131.3, a distance of approximately 131.3 miles.

The transaction was scheduled to be consummated on August 15, 2005, and the temporary trackage rights will expire on October 16, 2005. The purpose of the temporary trackage rights is to allow BNSF to bridge a limited number of its trains while its main lines are out of service due to programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34743, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Senior General Attorney, BNSF Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17025 Filed 8–25–05; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Friday,
August 26, 2005

Part II

Nuclear Regulatory Commission

10 CFR Part 26
Fitness for Duty Programs; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AF12

Fitness for Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for Fitness for Duty (FFD) programs to update the rule and enhance consistency with advances in other relevant Federal rules and guidelines, including the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines), and other Federal drug and alcohol testing programs that impose similar requirements on NRC licensees. The proposed amendments would require nuclear power plant licensees to strengthen the effectiveness of their FFD programs in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management of worker fatigue; and ensure consistency with the NRC's access authorization requirements for nuclear power plants. The proposed rule would ensure that individuals who are subject to these regulations are trustworthy and reliable, as demonstrated by avoiding substance abuse; are not under the influence of drugs or alcohol while performing their duties; and are not mentally or physically impaired from any other cause, that would in any way adversely affect their ability to perform their duties safely and competently.

This proposed rule would also grant, in part, a petition for rulemaking (PRM–26–1) submitted by Virginia Electric and Power Company (now Dominion Virginia Power) on December 30, 1993, by relaxing several required FFD program audit frequencies, and would partially grant a petition for rulemaking (PRM–26–2) submitted by Barry Quigley on December 28, 1999.

DATES: Submit comments on the rule by December 27, 2005. Submit comments specific to the information collections aspects of this rule by September 26, 2005. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments on the rule by any one of the following methods. Please include the following number (RIN 3150–AF12) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

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

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 A.M. and 4:15 P.M. on Federal workdays.

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

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Copyrighted documents may be viewed at the NRC's PDR, but may not be copied. The draft Regulatory Analysis and other documents related to this rulemaking, including comments can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Karas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3711, Timothy S. McCune, Office of Nuclear Security and Incident Response, telephone (301) 415–6474, or Dr. David R. Desaulniers, Office of Nuclear Reactor Regulation, telephone (301) 415–1043. All of the above contacts may also be reached by e-mail to *FITNESSFORDUTY@NRC.GOV*.

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I. Background

A. Drug and Alcohol Testing Provisions, and General Fitness-for-Duty Program Provisions

On June 7, 1989, the Commission announced the adoption of a new rule, 10 CFR Part 26, Fitness for Duty Programs (54 FR 24468), that required each licensee authorized to operate or construct a nuclear power reactor to implement a FFD program for all

personnel having unescorted access to the protected area of its plant. A subsequent final rule published in the **Federal Register** on June 3, 1993, (58 FR 31467) expanded the scope of Part 26 to include licensees authorized to possess, use, or transport formula quantities of Strategic Special Nuclear Materials (SSNM).

At the time the FFD rule was published in 1989, the Commission directed the NRC staff to continue to analyze licensee programs, assess the effectiveness of the rule, and recommend appropriate improvements or changes. The NRC staff reviewed information from several sources including inspections, periodic reports by licensees on FFD program performance, reports of significant FFD events, industry sponsored meetings and current literature, as well as initiatives by industry, the Substance Abuse and Mental Health Services Administration (SAMHSA, formerly the National Institute on Drug Abuse [NIDA]) and SAMHSA's Drug Testing Advisory Board, and recommended improvements and changes.

As a result, the NRC published proposed amendments to the FFD rule in the **Federal Register** on May 9, 1996 (61 FR 21105). The 90-day public comment period for the proposed rulemaking closed on August 7, 1996. The NRC staff reviewed and considered public comments on the proposed rule, and submitted a final rule to the Commission in a Commission paper (SECY–00–0159), dated July 26, 2000. The Commission affirmed the rule in a Staff Requirements Memorandum (SRM–M001204A) dated December 4, 2000. The affirmed rule was sent to the Office of Management and Budget (OMB) to obtain a clearance under the Paperwork Reduction Act. The request for comments on the clearance was published in the **Federal Register** on February 2, 2001 (66 FR 8812). OMB and NRC received public comments that objected to some aspects of the rule (responses to those comments are included in Section V of this document). In SECY–01–0134, dated July 23, 2001, the NRC staff recommended withdrawing the request for clearance and preparing a new proposed rule. In a Staff Requirements Memorandum (SRM–SECY–01–0134) dated October 3, 2001, the Commission approved the staff's recommendation to withdraw the request for clearance and prepare a new proposed rule.

B. Worker Fatigue Provisions

The NRC's ''Policy on Factors Causing Fatigue of Operating Personnel at Nuclear Reactors'' (referred to in this document as NRC's Policy on Worker Fatigue) was first published in the **Federal Register** on February 18, 1982, (47 FR 7352), and later issued through Generic Letter (GL) 82–12, ''Nuclear Power Plant Staff Working Hours,'' on June 15, 1982 (referred to in this document as GL 82–12). In GL 82–12, the NRC requested licensees to revise the administrative section of their technical specifications to ensure that plant administrative procedures were consistent with the revised work-hour guidelines. Those guidelines were:

(1) An individual should not be permitted to work more than 16 hours straight (excluding shift turnover time);

(2) An individual should not be permitted to work more than 16 hours in any 24-hour period, nor more than 24 hours in any 48-hour period, nor more than 72 hours in any seven day period (all excluding shift turnover time);

(3) A break of at least 8 hours should be allowed between work periods (including shift turnover time); and

(4) Except during extended shutdown periods, the use of overtime should be considered on an individual basis and not for the entire staff on a shift.

Further, the guidelines permitted deviations from these limits in very unusual circumstances if authorized by the plant manager, his deputy, or higher levels of management. The NRC's Policy on Worker Fatigue was incorporated, directly or by reference, and with variations in wording and detail, into the technical specifications of all but three nuclear power plant sites, who implemented the concept using other administrative controls.

When 10 CFR part 26 was issued on June 7, 1989 (54 FR 24468), it focused on establishing requirements for preventing and detecting personnel impairment from drugs and alcohol. However, consistent with SRM–SECY–88–129, dated July 18, 1988, several requirements addressed other causes of impairment, including fatigue. Those requirements included general performance objectives [§ 26.10(a) and (b)] that provided for ''* * * reasonable assurance that nuclear power plant personnel * * * are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause * * *'' and ''* * * early detection of persons who are not fit to perform activities within the scope of this part * * * '' A requirement was also included in § 26.20(a) for licensee policies to ''* * * address other factors that could affect fitness for duty such as mental stress, fatigue and illness.''

In a letter dated February 25, 1999, Congressmen Dingell, Klink, and Markey expressed concerns to former NRC Chairman Shirley Ann Jackson that low staffing levels and excessive overtime may present a serious safety hazard at some commercial nuclear power plants. The Union of Concerned Scientists (UCS) expressed similar concerns on March 18, 1999, in a letter from David Lochbaum to Chairman Jackson, and in the UCS report ''Overtime and Staffing Problems in the Commercial Nuclear Power Industry,'' dated March 1999. In a letter dated May 18, 1999, to the Congressmen, the Chairman stated that the NRC staff would assess the need to revise the policy.

Soon thereafter, the Commission received a petition for rulemaking (PRM–26–2), dated September 28, 1999, from Barry Quigley. (The petition is discussed in greater detail in Section II. B.) The petition requested that the NRC amend 10 CFR Parts 26 and 55 to establish clear and enforceable work hour limits to mitigate the effects of fatigue for nuclear power plant personnel performing safety-related work.

The UCS petitioned the NRC on April 24, 2001, pursuant to 10 CFR 2.206, to issue a Demand for Information (DFI) to specified licensees. The petition asserted that Wackenhut Corporation has the contractual right to fire security guards who refuse to report for mandatory overtime, and that this contractual right conflicts with 10 CFR Part 26. The NRC denied the DFI (ADAMS Accession No. ML013230169), but addressed the concerns of the petition through the NRC's generic communication process. On May 10, 2002, the NRC issued NRC Regulatory Issue Summary (RIS) 2002–07: ''Clarification of NRC Requirements Applicable to Worker Fatigue and Self-Declarations of Fitness-for-Duty.'' The RIS addressed the applicability of 10 CFR Part 26 to worker fatigue, the potential for sanctions related to worker FFD concerns to have adverse implications for maintaining a work environment conducive to reporting FFD concerns, and the protections afforded workers by 10 CFR 50.7, ''Employee Protection.''

On January 10, 2002, in SRM–SECY–01–0113, the Commission approved a rulemaking plan, Fatigue of Workers at Nuclear Power Plants, dated June 22, 2001 (referred to in this document as SECY–01–0113). In accordance with the approved plan, the NRC initiated a rulemaking to incorporate fatigue management into 10 CFR Part 26 in order to strengthen the effectiveness of FFD programs at nuclear power plants in ensuring against worker fatigue

adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management worker fatigue.

During the development of proposed fatigue management requirements, the NRC observed an increase in concerns (e.g, allegations, media and public stakeholder reports) related to the workload and fatigue of security personnel following the terrorist attacks of September 11, 2001. Following an NRC review of the control of work hours for security force personnel, and public interactions with stakeholders, the Commission issued Order EA–03–038 on April 29, 2003, requiring compensatory measures related to fitness-for-duty enhancements for security personnel at nuclear power plants, including work hour limits.

The compensatory measures imposed by Order EA–03–038 were similar to the guidelines of the NRC's Policy on Worker Fatigue. The compensatory measures differed from the Policy guidelines in a few areas in which the NRC believed it was necessary to address previously identified deficiencies in the guidelines, including the need to address cumulative fatigue from prolonged use of extended work hours, matters unique to security personnel, and stakeholder input obtained through public meetings concerning the proposed worker fatigue rulemaking and the Order. The requirements in the Order were imposed to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected. The provisions specified in proposed 10 CFR Part 26, Subpart I, Managing Fatigue, for security force personnel would replace the requirements imposed by Order. Differences between the proposed requirements in Subpart I and the requirements imposed by Order, and the rationale for those differences, are discussed in Section IV. D.

C. Combined Part 26 Rulemaking

On March 29, 2004, in COMSECY–04–0014, the NRC staff informed the Commission of the status of both rulemaking activities. The NRC staff also noted that because both rulemaking activities were being completed in parallel, the draft proposed fatigue rule language was based on the draft language in the proposed overall revision to Part 26, rather than on the current language in Part 26. Therefore, meaningful public comment could be confounded by the simultaneous promulgation of two draft rules which are somewhat interdependent, and staff action to address a comment on one proposed rule could easily impact the other proposed rule, creating a high potential for the need to repropose one or both rules. In SRM–COMSECY–04–0014, dated May 25, 2004, the Commission directed the staff to combine the rulemaking related to nuclear power plant worker fatigue with the ongoing Part 26 rulemaking activity. This combined proposed rule withdraws the proposed rule published on May 9, 1996.

II. Petitions and Request for Exemption

A. Petition for Rulemaking PRM–26–1

On December 30, 1993, Virginia Electric and Power Company (now Dominion Virginia Power) submitted a Petition for Rulemaking (PRM–26–1) requesting relaxation of the required 1-year audit frequency of the FFD program and of licensee FFD programs and the program elements of contractors and vendors (C/Vs) that are relied upon by licensees. The petition requested that the first sentence of 10 CFR 26.80(a) be amended to read:

''Each licensee subject to this Part shall audit the fitness-for-duty program nominally every 24 months * * * In addition, audits must be conducted, nominally every 24 months, of those portions of fitness-for-duty programs implemented by contractors and vendors * * *''

In a letter dated March 14, 1994, the NRC informed the petitioner that the petition would be addressed in a proposed rulemaking that was under development. The NRC has periodically communicated with the petitioner regarding the status of this rulemaking since that time.

Proposed § 26.41(b) would partially grant two aspects of the petition. That is, the required audit frequency for licensees and other entities who are subject to 10 CFR Part 26 would be reduced from the nominal 1-year frequency in the current rule to a nominal 2-year frequency. Further, audits of C/V services that are performed on site and under the direct daily supervision or observation of licensee personnel would be conducted as part of the 2-year audits of the licensee or other entity's FFD program, under proposed § 26.41(b).

Proposed § 26.41(c)(1) would partially deny two aspects of the petition. That is, the nominal annual audit requirement for HHS-certified laboratories would be retained. In addition, the annual audit requirement would be retained for FFD program elements provided by C/Vs whose personnel ''* * * are off site or are not under the direct daily supervision or observation of licensee personnel * * *''

The bases for these changes to audit requirements in the proposed rule are addressed in the subsequent sections of this supplementary information.

B. Petition for Rulemaking PRM–26–2

On September 28, 1999, Barry Quigley submitted a Petition for Rulemaking (PRM–26–2) requesting that the NRC amend 10 CFR Parts 26 and 55 to establish clear and enforceable work hour limits to mitigate the effects of fatigue for nuclear power plant personnel performing safety-related work. The PRM was published for public comment on December 1, 1999, (64 FR 67202). As described in Attachment 3 to SECY–01–0113, the petition requested the NRC to:

(1) Add enforceable working hour limits to 10 CFR Part 26;

(2) Add a criterion to 10 CFR 55.33(a)(1) to require evaluation of known sleeping disorders;

(3) Revise the NRC Enforcement Policy to include examples of working hour violations that warrant various NRC sanctions; and

(4) Revise NRC Form 396 to include self-disclosure of sleeping disorders by licensed operators.

The NRC received 176 comment letters in response to the petition. The majority of the comments (157) were in favor of a rule. These comments were principally from individuals and public interest groups. Comments received from licensees, the Nuclear Energy Institute (NEI) and Winston and Strawn, a law firm representing several utilities, were opposed to PRM–26–2. A summary of the comments and responses is available in SECY–01–0113 as Attachment 2. This document may be obtained from the NRC's Web site, *http://www.nrc.gov,* by selecting the electronic reading room and then collections of documents by type. It is also available in the NRC's Agencywide Documentation and Management System (ADAMS) under Package Accession Number ML010180224.

Although the NRC received many comments concerning the specific requirements proposed in PRM–26–2, in general, letters in support of the rulemaking—

(1) Cited the importance of ensuring that personnel who perform safety-related functions are not impaired by fatigue;

(2) Expressed concern that the NRC does not have a regulation limiting working hours and the perception that the NRC lacks the authority to enforce

the guidelines in the NRC's Policy on Worker Fatigue;

(3) Asserted that the guidelines are ambiguous and that licensees interpret the guidelines as not applicable when the plant is in an outage;

(4) Asserted that ''the NRC appears to look the other way'' when licensee work scheduling practices appear inconsistent with the guidelines; and

(5) Expressed the concern that utility restructuring and cost competition will cause reductions in staffing levels and increased working hours and fatigue.

Further, several commenters noted that the Federal Government has established work hour limits for personnel in other industries and suggested that similar limits should apply to nuclear power plant workers.

In general, comments that opposed the petition expressed the opinion that existing regulatory requirements (*i.e.*, technical specifications and 10 CFR Part 26) are adequate to ensure that personnel are not impaired by fatigue, that the proposed requirements would impose an unnecessary and excessive burden that could not be justified through a backfit analysis, and that industry performance data refute the petitioner's argument that a rule is necessary to prevent fatigued personnel from performing safety-related work.

The NRC has evaluated the merits of PRM–26–2, the comments received in response to the PRM, and assessed the Policy on Worker Fatigue. The NRC has concluded that the petitioner proposed a comprehensive set of requirements that could reasonably be expected to effectively address fatigue from individual and programmatic causes. However, the NRC believes that it is possible to achieve these objectives through alternative requirements that are more flexible, more directly focused on risk, and more aligned and integrated with current regulatory requirements. The proposed rule would therefore grant, in part, PRM–26–2. A detailed discussion of the principal findings that led to the decision to grant, in part, PRM–26–2 through rulemaking are included in Section IV. D. of this document. In addition, for item 3 of PRM–26–2, the NRC revised Inspection Procedure (IP) 71130.08, ''Fitness For Duty Programs'' on February 19, 2004, to reflect the requirements of Order EA–03–038, dated April 29, 2003, which required compensatory measures related to fitness-for-duty enhancements for security personnel at nuclear power plants, including work hour limits. The NRC plans to similarly revise the same documents during preparation of the final Part 26 rule. The self-disclosure of sleeping disorders by licensed operators (item 4) is being addressed by the NRC as a separate effort from this proposed rule through changes to Regulatory Guide 1.134, ''Medical Evaluation of Licensed Personnel at Nuclear Power Plants.''

C. Request for Exemption under 10 CFR 26.6

The current rule requires random drug and alcohol testing for personnel with unescorted access to the protected area of a nuclear power plant. By letter dated March 13, 1990, the International Brotherhood of Electrical Workers (IBEW) Local 1245 requested an exemption from random testing for clerical, warehouse, and maintenance workers at the Diablo Canyon Nuclear Power Plant (Diablo Canyon) under the provisions of 10 CFR 26.6. The NRC denied the request and IBEW Local 1245 sought judicial review. In 1992, the Ninth Circuit Court of Appeals affirmed the NRC's denial of the request (IBEW, Local 1245 v. NRC, No. 90–70647, 9th Cir., June 11, 1992). In its opinion, the court said that random testing may well be impermissible for clerical workers at Diablo Canyon who perform no safety-sensitive work and have no access to vital areas. However, in the record before the court at that time, IBEW Local 1245 had not established that such a group existed. On January 26 and December 6, 1993, IBEW Local 1245 renewed its request for exemption, specifically asking that the NRC exempt from 10 CFR Part 26 requirements for random drug testing, clerical employees at Diablo Canyon who are members of Local 1245 of the IBEW and who have unescorted access to the protected area (PA) only, but not to the radiologically controlled areas (RCAs) or vital areas (VAs) and who are not required to staff the plant's emergency response center (ERC). The PA is the area inside the security fence of a nuclear power plant, which surrounds the entire plant, and the immediately surrounding area, whereas the VAs enclose key safety systems and are located within the PA. The RCAs contain elevated levels of radiation or contamination and are generally located within the PA. The ERC is located offsite and is where the licensee evaluates and coordinates licensee activities related to an emergency, and communicates to Federal, State and local authorities responding to radiological emergencies. The NRC requested public comment on the issue in the **Federal Register** of May 11, 1994 (59 FR 24373). Comments were received from the nuclear industry, which largely opposed a reduction in the scope of random testing, and from elements of the IBEW, including Local 1245, which favored it. In SRM–SECY–04–0229, dated January 10, 2005 (available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/commission/srm/)*, the Commission denied the IBEW exemption request because it—

(1) Would endanger the common defense and security (as a result of increasing the likelihood of an insider threat); and

(2) Was not in the public interest (because reducing the scope of random drug testing could increase the risk to public health and safety due to a greater risk of both sabotage (insider threat due to vulnerability to coercion) and of an accident (impaired worker)).

Consequently, this proposed rule would maintain the current requirement for random drug and alcohol testing for personnel with unescorted access to the PA at a nuclear power plant.

III. Abbreviations

The following abbreviations and acronyms are used in this Statement of Considerations.

AEA Atomic Energy Act
ASDs Alcohol screening devices
BAC Blood alcohol concentration
CPL Conforming products list
C/V Contractor/vendor
DOT Department of Transportation
EAP Employee assistance program
EBT Evidential breath testing device
EPRI Electric Power Research Institute
FFD Fitness for duty
GC/MS Gas chromatography/mass spectrometry
HHS Department of Health and Human Services
IBEW International Brotherhood of Electrical Workers
KAs Knowledge and abilities
LOD Limit of detection
LOQ Limit of quantitation
mg/dL Milligrams per deciliter
MRO Medical Review Officer
NEI Nuclear Energy Institute
ng/dL Nanograms per deciliter
NHTSA National Highway Transportation Safety Administration
NRC Nuclear Regulatory Commission
NSF National Sleep Foundation
OMB Office of Management and Budget
PDFFDI Potentially disqualifying fitness-for-duty information
pH potential of hydrogen
POGO Project on Government Oversight
PROS Professional Reactor Operator Society
QA/QC Quality assurance/quality control
SAE Substance Abuse Expert
SAMHSA Substance Abuse and Mental Health Services Administration

SSNM Strategic special nuclear material
THC Tetrahydrocannabinol, delta-9-tetrahydrocannabinol-9-carboxylic acid
UCS Union of Concerned Scientists
6–AM 6-acetylmorphine

IV. Discussion of Proposed Action

A. Overview

A review of FFD program experience confirms that the regulatory approach of 10 CFR Part 26 is fundamentally sound and continues to provide a means of deterrence and detection of substance abuse at licensee facilities. NRC Information Notice 2003–04, ''Summary of Fitness-for-Duty Program Performance Reports,'' dated February 6, 2003, provides the latest published summary of program performance. This document may be obtained from the NRC's Web site, *http://www.nrc.gov,* by selecting the electronic reading room and then collections of documents by type. It is also available in ADAMS under Accession No. ML030350473.

Nonetheless, the NRC believes that revisions are needed to improve the effectiveness and efficiency of FFD programs; enhance consistency with advances in similar rules and guidelines, including the HHS Guidelines and other Federal drug and alcohol testing programs that place similar requirements on the private sector; strengthen the effectiveness of FFD programs at nuclear power plants in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management of worker fatigue; enhance consistency with the NRC's access authorization requirements; improve clarity in the organization and language of the rule; and improve Part 26 by eliminating or modifying unnecessary requirements.

B. Goals of the Rulemaking Activity

The Nuclear Regulatory Commission (NRC) proposes to amend 10 CFR Part 26, Fitness for Duty Programs. The proposed goals are to:

(1) Update and enhance the consistency of 10 CFR Part 26 with advances in other relevant Federal rules and guidelines, including the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs and other Federal drug and alcohol testing programs (*e.g.*, those required by the U.S. Department of Transportation [DOT]) that impose similar requirements on the private sector.

(2) Strengthen the effectiveness of FFD programs at nuclear power plants in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management of worker fatigue;

(3) Improve the effectiveness and efficiency of FFD programs.

(4) Improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

(5) Improve Part 26 by eliminating or modifying unnecessary requirements.

(6) Improve clarity in the organization and language of the rule.

(7) Protect the privacy and due process rights of individuals who are subject to Part 26.

Each of these goals is expected to result in substantial improvements in FFD programs. Many changes in the proposed rule relate to each goal. The major changes for each subpart, and the reasons for those changes, are described in Section IV. C and D of this document. For each of the many specific changes that are being proposed, detailed discussions are included in Section VI. However, the following discussion provides a description of each goal, a basis for the need to accomplish that goal, and several examples of proposed changes to the rule that would contribute to meeting the goal.

Goal 1—Update and enhance the consistency of 10 CFR Part 26 with advances in other relevant Federal rules and guidelines, including the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs (referred to in this document as the HHS Guidelines) and other Federal drug and alcohol testing programs (*e.g.*, those required by the U.S. Department of Transportation [DOT]) that impose similar requirements on the private sector. Goal 1 is central to this rulemaking activity. Many changes are included in the proposed rule to maintain consistency with advances in the conduct of FFD programs, including changes in the HHS Guidelines. The 1994, 1998, and 2004 revisions to the HHS Guidelines differ substantially from the 1988 version of the Guidelines, upon which the current rule is based.

The President of the United States designated HHS as the agency responsible for the Federal workplace drug testing program, and HHS' Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for maintaining the HHS drug testing guidelines based on the most recent research and the accumulation of lessons learned from the Federal drug testing program, as well as others who are regulated. The NRC has historically relied on HHS to establish the technical requirements for urine specimen collection, testing and evaluation, and has only deviated from HHS' guidelines for considerations that are specific to the nuclear industry. Updating Part 26 to be consistent with HHS' most recent Guidelines ensures that NRC regulations continue to be scientifically and technically sound.

Further, the HHS-certified laboratories that Part 26 requires licensees to use for drug testing are required by HHS to follow the HHS Guidelines in order to retain their certification. Basing Part 26 on older versions of the HHS Guidelines, or deviating from those Guidelines, increases the cost of drug testing for the nuclear industry. Therefore, updating Part 26 to increase consistency with the HHS Guidelines not only ensures that Part 26 is based on the best scientific and technical information available, but also avoids imposing an unnecessary and costly regulatory burden on the nuclear industry.

One example of an improvement from enhancing consistency with the HHS Guidelines is that several cutoff levels for detection of various drugs would be updated, including a revised lower cutoff level for the marijuana metabolite, THC. The lower cutoff level will provide greater assurance that individuals who use marijuana are identified.

Additionally, a revision to the HHS Guidelines, published in the **Federal Register** on April 13, 2004 (69 FR 19643) as a final rule, includes requirements for instrumented specimen validity tests to determine whether a urine specimen has been adulterated, diluted, or substituted. This proposed rule would adopt significant portions of the final HHS specimen validity testing provisions. The new validity testing requirements will substantially improve the effectiveness of the measures to guard against subversion of the testing process that are contained in current Part 26.

Several other provisions for drug testing are under consideration by HHS and were published as a proposed rule for public comment in the **Federal Register** on April 13, 2004 (69 FR 19672). One proposed change to 10 CFR Part 26 that was included from the proposed HHS Guidelines is permission for licensees to use non-instrumented validity testing devices to determine

whether a urine specimen must be subject to further testing at an HHS-certified laboratory because it may have been adulterated, diluted, or substituted, in lieu of the instrumented validity testing required in the April 13, 2004, final version of the HHS Guidelines. Although the HHS Guidelines that would permit Federal drug testing programs to use non-instrumented validity testing devices for initial testing of urine specimens are not yet final, some NRC licensees desired the flexibility to use these testing methods. A technical basis for use of those methods is included in Section VI. However, the NRC is not proposing to include other provisions in the proposed HHS Guidelines at this time. Those provisions include permitting the drug testing of specimens other than urine (*e.g.*, hair, saliva, sweat), requirements for split specimen procedures for all specimens, and HHS certification of instrumented initial test facilities, which would be analogous to licensee testing facilities. Should such provisions be included in final HHS Guidelines in the future, the NRC will consider incorporating them into 10 CFR Part 26 at that time.

In addition to the proposed changes to 10 CFR Part 26 that incorporate the recent revisions to the HHS Guidelines, the Department of Transportation (DOT) revised its Procedures for Transportation Workplace Drug and Alcohol Testing Programs [49 CFR 40, 65 FR 41944; August 9, 2001] to include the use of oral fluids (*i.e.*, saliva) as acceptable specimens for initial alcohol screening tests. The proposed rule would also reflect the new oral fluids testing technology to provide FFD programs with increased flexibility in administering initial alcohol tests.

Because the HHS Guidelines do not establish requirements for alcohol testing, NRC relies on the DOT regulations, in part, to ensure that the alcohol testing provisions of Part 26 remain scientifically sound and legally defensible. Because the DOT programs test a much larger number of individuals, in comparison to the number of alcohol tests that are conducted under Part 26, basing the NRC's alcohol testing regulations on portions of the DOT regulations reflects the lessons learned from that larger population.

Goal 2—Strengthen the effectiveness of FFD programs at nuclear power plants in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management of worker fatigue. This goal is central to this rulemaking activity. Proposed Subpart I, Managing Fatigue, would add clear and enforceable requirements for licensee management of worker fatigue to 10 CFR Part 26. The proposed requirements would reduce the potential for worker fatigue, and therefore strengthen the effectiveness of FFD programs at nuclear power plants and substantially increase the protection of public health and safety and the common defense and security. Section VI discusses the specific reasons for each proposed worker fatigue provision. Section IV. D provides a detailed discussion of the overall basis for establishing fatigue management requirements for FFD programs, and the benefits expected to result.

Goal 3—Improve the effectiveness and efficiency of FFD programs. The NRC has gained experience in the actual implementation of FFD programs since Part 26 was originally promulgated. The NRC is proposing many changes throughout Part 26 based on that experience in order to improve the industry's programs specifically to increase both the effectiveness of the programs in achieving the goals of Part 26, and the efficiency of program operations. Increasing the effectiveness and efficiency of FFD programs will enhance the protection of public health and safety and the common defense and security.

One example of a change related to Goal 3 is the proposed reduction in the period within which pre-access testing must be performed from 60 days, in current § 26.24(a)(1), to 30 days or less, in proposed Subpart C [Granting and Maintaining Authorization]. This proposed change would improve the effectiveness of the pre-access test in detecting drug and alcohol use by individuals who are applying for authorization to perform the types of job duties that require them to be subject to Part 26 (see proposed § 26.25 [Individuals subject to the fitness-for-duty program]). Reducing the number of breath specimens required for alcohol testing from two each for initial and confirmatory testing, in current Section 2.4(g)(18) in Appendix A to Part 26, to one specimen for the initial test and one for the confirmatory test, if required, in proposed § 26.91(d), would increase the efficiency of FFD programs without compromising the accuracy and validity of alcohol test results.

Another example would be establishing a regulatory framework for the management of worker fatigue that appropriately balances the need for flexibility to manage plant exigencies and worker individual differences relative to fatigue with the need for more readily enforceable requirements and efficient NRC oversight of licensee compliance with the requirements and performance objectives of the rule.

Goal 4—Improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003. Current FFD and access authorization requirements each contain provisions that relate to establishing the trustworthiness and reliability of personnel prior to granting unescorted access to the protected areas of nuclear power plants. The NRC has determined that, because both sets of requirements share this same goal, revising Part 26 would clarify the relationship between these requirements, particularly for licensee access authorization decisions regarding personnel who move between sites with some interruption in their status of having unescorted access to a nuclear power plant. In addition, some requirements in Part 26 address the granting of temporary unescorted access. In response to the terrorist attacks of September 11, 2001, on the World Trade Center and the Pentagon, and the current threat environment, the Commission took action to curtail the use of temporary unescorted access at commercial nuclear power plants. Temporary unescorted access was eliminated by orders issued January 7, 2003, which imposed compensatory measures on existing access authorization programs. Therefore, it is necessary to revise the related provisions in Part 26.

Goal 5—Improve 10 CFR Part 26 by eliminating or modifying unnecessary requirements. The proposed rule would incorporate a number of changes to eliminate or modify unnecessary requirements. The experience NRC has gained over the years since Part 26 was promulgated have enhanced the agency's understanding of implementation by the industry, and the NRC now proposes to eliminate or modify some provisions, while at the same time maintaining the protection of public health and safety and the common defense and security.

For example, because of inconsistencies in FFD and access authorization requirements for conducting employment inquiries, many licensees contacted an individual's previous employers twice—once to obtain the information required under Part 26 and once to obtain the information required for access authorization. Proposed revisions to Part 26 would clarify that licensees may obtain information to satisfy FFD

suitable inquiry requirements and related access authorization requirements at the same time when conducting an employment inquiry.

Goal 6—Improve clarity in the organization and language of the rule. The proposed rule is organized to facilitate implementation, as compared to the current rule which has generated many questions from licensees. Therefore, in the proposed rule, the NRC has substantially reorganized the requirements to eliminate redundancies, to group related requirements, and to present requirements in the order in which they would apply to licensees' FFD processes. In addition, the NRC has proposed many language changes to improve clarity. The NRC has undertaken this substantial reorganization to improve the protection of public health and safety and the common defense and security by substantially reducing the likelihood of variations in FFD programs across the industry through differing interpretations of the rule. The proposed rule is clearer in both organization and language, and is expected to result in more uniform implementation, and, consequently, more consistency in achieving the Part 26 goals.

In contrast to certain NRC regulations, Part 26 includes a considerable number of detailed requirements. In the public meetings held during the development of this proposed rule, industry representatives indicated that they consider this level of detail necessary to help protect individual privacy and ensure consistency in implementing the requirements. Additionally, industry representatives indicated that this high level of detail can help to avoid unnecessary litigation between licensees and individual personnel regarding worker non-compliance with specific drug and alcohol testing performance steps. Such litigation would be more likely if those specific performance steps were not required by NRC rule. The level of detail and the enhanced clarity in the new language and organization included in proposed Part 26 have eliminated the need for a guidance document. In the public meetings described in Section V, industry representatives commented that a guidance document would not have the same weight as a rule, and that both licensees and individuals should be protected fully with rigor and specificity in a rule. Industry therefore desired the rule to be more specific and detailed, in lieu of a guidance document.

Goal 7—Protect the privacy and due process rights of individuals who are subject to 10 CFR Part 26. This goal is an implicit objective of the current rule, and the proposed rule would also continue to protect the privacy and due process rights of individuals who are subject to 10 CFR Part 26. The NRC, DOT, and HHS have all gained experience in implementing workplace drug and alcohol testing programs. This experience has led DOT and HHS to modify many of their requirements for such testing to more clearly protect privacy and due process rights of individuals. Many of the proposed changes to Part 26 related to this goal are based on either DOT or HHS requirements. The NRC believes the protection of individual rights to be of the highest importance, and proposes changes to Part 26 to ensure that those rights are protected through rule language developed using the best available information. One example of such a change is that ''Bottle B'', the second portion of a split urine specimen, would now only be tested with the donor's written permission.

C. Overview of Proposed Rule

The proposed rule would be divided into subparts that contain related requirements. This proposed change would be made to improve the ease of implementing the rule by grouping related requirements and presenting them generally in the order in which they would apply to licensees' and other entities' FFD processes. Each subpart would be assigned a descriptive title to aid users in locating rule provisions and to simplify cross-referencing within the proposed rule. The major topics addressed in each subpart and the reasons that the major changes are being proposed are described below. A detailed cross-reference table between the current and proposed Part 26 provisions is included at the end of this notice.

Subpart A Administrative Provisions

The first subpart, proposed Subpart A [Administrative Provisions], would replace the General Provisions portion of the current rule, but continue to address the same subject matter. Thus, Subpart A would address the purpose and scope of the rule, provide definitions of important terms used in the proposed rule, and update current provisions related to requests for specific exemptions, interpretations of the rule, and communications with the NRC.

Subpart B Program Elements

Subpart B [Program Elements] of the proposed rule would reorganize and amend current §§ 26.10–26.29, which specify the performance objectives that FFD programs would be required to meet and the FFD program elements that licensees and other entities must implement to meet the performance objectives. However, the proposed rule would not include current § 26.27 [Management actions and sanctions to be imposed] in Subpart B for two reasons. First, at the public meetings described in Section V. B, stakeholders requested that the rule be reorganized to be consistent with the order in which licensees and other entities would implement their programs. Because Subpart B would be focused on establishing the framework of FFD programs, it would be premature to present requirements related to implementing the FFD program (i.e., imposing sanctions on an individual for violating the FFD policy) at this point in the proposed rule. Second, the stakeholders suggested, and the NRC staff concurred after consideration, that the subject matter of current § 26.27 is sufficiently important and complex that a separate subpart is warranted. Therefore, the proposed rule would present requirements related to management actions and sanctions in proposed Subpart D [Management Actions and Sanctions to be Imposed].

Subpart C Granting and Maintaining Authorization

Subpart C [Granting and Maintaining Authorization] of the proposed rule would substantially amend current FFD requirements related to the process that licensees and other entities must follow in determining whether an individual is trustworthy and reliable, as demonstrated by avoiding substance abuse, and can be expected to perform his or her job duties safely and competently. The proposed rule would introduce the concept of ''authorization'' to Part 26 to refer to the status of an individual who the licensee or other entity has determined can be trusted to perform the job duties described in proposed § 26.25 [Individuals subject to the fitness-for-duty program], as a result of the process described in this subpart. For example, in the case of nuclear power plant personnel, an individual who is ''authorized'' under Part 26 may be permitted to have unescorted access to protected areas in nuclear power plants if the individual's job requires such access.

The NRC has published other requirements, such as 10 CFR 73.56, that establish additional steps that licensees and other entities must take as part of the process of determining whether to grant authorization to an individual or permit an individual to

maintain authorization. These additional requirements focus on aspects of an individual's character and reputation other than substance abuse, and, among other steps, require the licensee or other entities who are subject to the rule to conduct a psychological assessment of the individual, a credit and criminal history check, and interview individuals who have knowledge of the applicant for authorization. However, as discussed in Section IV. B, historically there have been some inconsistencies and redundancies between the Part 26 requirements related to granting and maintaining authorization and the other, related regulations, particularly the NRC's access authorization requirements for nuclear power plant personnel. The inconsistencies have led to many implementation questions from licensees, as well as inconsistencies in how licensees have implemented the requirements. The redundancies have, in other cases, imposed an unnecessary burden on licensees. Therefore, a central goal of adding Subpart C to the proposed rule is to eliminate those inconsistencies and redundancies to ensure that licensees and the other entities who are subject to the rule have clear and easily interpretable requirements to follow when determining whether to grant or maintain an individual's authorization under Part 26 and also under other, related requirements, including, but not limited to, the access authorization orders issued by the NRC to nuclear power plant licensees on January 7, 2003.

The requirements in proposed Subpart C are based upon several fundamental changes to the NRC's approach to the authorization requirements in current Part 26. The primary concern, which Subpart C is designed to address, is the necessity of increasing the rigor of the authorization process to provide reasonable assurance that any individual who is granted and maintains authorization is trustworthy and reliable, as demonstrated by avoiding substance abuse. The necessity for increased rigor in the authorization process is discussed in Section IV. C with respect to proposed § 26.23(a) in terms of the increased insider threat since the terrorist attacks of September 11, 2001. One change to current Part 26 authorization requirements that reflects this concern is the elimination of temporary access authorization requirements in the second sentence of current § 26.27(a)(4). Other changes are discussed in Section IV with respect to the specific provisions that would incorporate them.

A second, related change to the NRC's approach to authorization requirements, which has informed proposed Subpart C, is an increased concern with the sharing of information about individuals between licensees and other entities. At the time the current Part 26 was developed, the industry structure was different and personnel transfers between licensees (*i.e.*, leaving the employment of one licensee to work for another licensee) with interruptions in authorization were less common. Most licensees operated plants at a single site and maintained an FFD program that applied only to that site. When an individual left employment at one site and began working for another licensee, the individual was subject to a different FFD program that often had different requirements. Because some licensees were reluctant to share information about previous employees with the new employer, licensees often did not have access to the information the previous licensee had gathered about the individual and so were required to gather the necessary information again. The additional effort to collect information that another licensee held created an unnecessary burden on both licensees. But, because few individuals transferred, the burden was not excessive.

However, since 1989, the industry has undergone significant consolidation and developed new business practices to use its workforce more efficiently. Industry efforts to better use expertise and staffing resources have resulted in the development of a large transient workforce within the nuclear industry that travels from site to site as needed, such as roving outage crews. Although the industry has always relied upon C/Vs for special expertise and staff for outages, the number of transient personnel who work solely in the nuclear industry has increased and the length of time they are on site has decreased. Because the current FFD regulations were written on the basis that individual licensees would maintain independent, site-specific FFD programs and would share limited information, and that the majority of nuclear personnel would remain at one site for years, the regulations do not adequately address the transfer of personnel between sites.

These changes in the industry have increased the need for information sharing among licensees and C/Vs. The increased insider threat since September 11, 2001, has also heightened the need for information sharing among licensees and C/Vs to ensure that licensees and other entities have information that is as complete as possible about an individual when making an authorization decision. To address this need, the access authorization orders issued by the NRC to nuclear power plant licensees on January 7, 2003, mandated increased sharing of information. In addition, proposed Subpart C would require licensees and other entities to collect and share greater amounts of information than under the current rule, subject to the protections of individuals' privacy that would be specified in proposed § 26.37 [Protection of information]. As a result, individuals who are subject to the rule would establish a detailed ''track record'' within the industry that would follow them if they change jobs and move to a new position that requires them to be granted authorization by another licensee or entity who is subject to the rule. This increased information sharing would contribute to providing reasonable assurance that individuals who are granted and maintain authorization are trustworthy and reliable when individuals move between FFD programs.

However, a consequence of increased information sharing is that one violation of any licensee's FFD policy has greater potential to end an individual's career. Although an individual who has an active substance abuse problem cannot be permitted to hold authorization, the NRC continues to affirm that individuals who pursue treatment, stop abusing drugs or alcohol, and maintain sobriety for an extended period of time should regain the public's trust. The length of time that an individual must maintain sobriety in order to demonstrate that he or she can again be trusted with the public's health and safety and the common defense and security has been a matter of debate since Part 26 was originally under development. However, the research literature continues to indicate that individuals who maintain sobriety past the first 3 years following treatment have substantially reduced recidivism rates (i.e., relapsing into substance abuse) than during the first 3 years after treatment and there is a further drop in recidivism rates after 5 years of sobriety.

Despite these research findings, some individuals who have had one confirmed positive test result have been prevented from working in operating nuclear power plants. The increased information sharing that would be required under Subpart C has the potential to result in a greater number of such individuals being banned from working in the industry. Therefore, several requirements would be added to

proposed Subpart C to minimize such consequences for individuals who are able to demonstrate that they have resolved a substance abuse problem. Additional requirements for protecting information that would be gathered about individuals under proposed Part 26 would be specified in proposed § 26.37 [Protection of information]. The detailed changes to current requirements are discussed in Section VI with respect to the specific provisions that would incorporate them.

In general, the authorization requirements in proposed Subpart C would be structured according to whether an individual who has applied for authorization has previously held authorization under Part 26. If an individual has not established a ''track record'' in the industry, the proposed rule would require licensees and other entities to meet an extensive set of requirements before granting authorization to the individual. If an individual has established a favorable track record in the industry, the amount of original information gathering that the proposed rule would require licensees and other entities to complete before granting authorization to the individual would be reduced. The need for original information gathering in these instances would be reduced because, under the proposed rule, licensees and other entities would have access to all of the information that previous FFD programs had collected about the individual.

For individuals who have established a favorable track record in the industry, the steps that licensees and other entities would be required to complete in order to grant authorization to an individual would also depend upon the length of time that has elapsed since the individual's last period of authorization was terminated and the amount of supervision to which the individual was subject during the interruption. (The term, ''interruption,'' refers to the interval of time between periods during which an individual holds authorization under Part 26.) In general, the more time that has elapsed since an individual's last period of authorization ended, the more steps that the proposed rule would require licensees and other entities to complete before granting authorization to the individual. However, if the individual was subject to behavioral observation under a Part 26 program or continued to be subject to random drug and alcohol testing during the interruption, the proposed rule would require licensees and other entities to complete fewer steps in order to grant authorization to the individual. There are several reasons that the proposed rule would require fewer steps in the authorization process for these individuals.

First, individuals who have established a favorable work history in the industry have demonstrated their trustworthiness and reliability from previous periods of authorization, so they pose less potential risk to public health and safety and the common defense and security than individuals who are new to the industry. Much is known about these individuals. Not only were they subject to the initial background screening requirements before they were initially granted authorization, but, while they were working under a Part 26 program, they were watched carefully through on-going behavioral observation, repeatedly attained negative results from random drug and alcohol tests, and demonstrated the ability to consistently comply with the many procedural requirements that are necessary to perform work safely at operating power reactor facilities.

Second, individuals who have established a favorable work history in the industry and whose authorization has been interrupted for only a short period would be unlikely to develop an active substance abuse problem during the interruption. The shorter the period of time since the individual's last period of authorization ended, the less likely it is that the individual would have developed an active substance abuse problem or undergone significant changes in lifestyle or character that would diminish his or her trustworthiness, reliability, and ability to perform work safely and competently.

Further, if the individual was also subject to supervision under some elements of a Part 26 program (e.g., behavioral observation, a requirement to report any arrests, random drug and alcohol testing) during the period that his or her authorization was interrupted, the higher the assurance that the individual does not have an active substance problem. And, the less likely it would be that the individual could have undergone significant changes in lifestyle or character that would be undetected.

Therefore, the proposed rule would establish categories of requirements for granting authorization to an individual that would vary, based upon whether the individual has previously held authorization under Part 26; whether the individual's last period of authorization was terminated favorably or unfavorably; how long it has been since the individual last held authorization under Part 26; and whether the individual was subject to any elements of a Part 26 program during the interruption period. Proposed § 26.55 [Initial authorization] would establish authorization requirements for individuals who have not previously held authorization under Part 26 and individuals who have not held authorization within the past 3 years. Proposed § 26.57 [Authorization update] would establish authorization requirements for individuals who previously held authorization under Part 26, whose last period of authorization was terminated favorably more than 1 year ago but less than 3 years ago. Proposed § 26.59 [Authorization reinstatement] would establish authorization requirements for individuals who previously held authorization under Part 26 and whose last period of authorization was terminated favorably within the past year. Proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information] would define the steps that licensees and other entities must take in granting authorization to an individual about whom potentially disqualifying FFD information has been disclosed or discovered.

The time periods used to establish these categories of authorization requirements would be consistent with the categories established in the access authorization orders issued by the NRC to nuclear power plant licensees on January 7, 2003. Basing the proposed requirements on elapsed time is consistent with the programs of other Federal agencies who have similar needs to control access to sensitive information and protected areas. In addition, these time periods have been used successfully within nuclear power plant access authorization programs since 1989 and have met the NRC's goal of ensuring that individuals who are granted unescorted access are trustworthy and reliable. Therefore, the proposed rule would incorporate these time periods within Part 26.

In general, the steps that would be required to grant authorization to an individual who has recently held authorization and whose most recent period of authorization was terminated favorably would be less extensive than the steps required for applicants for authorization who are new to the industry or those who have not recently held authorization. In addition, the requirements for a rigorous evaluation process contained in the current § 26.27(e) would be strengthened and licensees and other entities would be required to meet them before granting authorization to an individual about whom potentially disqualifying FFD information has been disclosed or

discovered (see proposed § 26.69). The proposed rule would require licensees and other entities to obtain and review a written self-disclosure from the applicant and an employment history, and ensure that a suitable inquiry and pre-access drug and alcohol testing are completed before granting authorization to an individual, with certain exceptions. The proposed exceptions to the self-disclosure and employment history, suitable inquiry, and pre-access testing requirements would be specified in proposed §§ 26.61 [Self-disclosure and employment history], 26.63 [Suitable inquiry], and 26.65 [Pre-access drug and alcohol testing], respectively. The proposed rule would also require licensees and other entities to ensure that applicants are subject to random testing, as specified in proposed § 26.67 [Random drug and alcohol testing of individuals who have applied for authorization].

Subpart D Management Actions and Sanctions

Subpart D [Management Actions and Sanctions] of the proposed rule would replace current § 26.27(b) and (c) and divide the current provisions into two separate sections that specify requirements for responding to FFD policy violations in proposed § 26.75 [Sanctions], and indications of impairment in proposed § 26.77 [Management actions regarding possible impairment]. The current rule would be reorganized in response to stakeholder requests that were made during the public meetings discussed in Section V. The stakeholders requested that the proposed rule generally reflect the order in which the requirements apply to licensees' and other entities' FFD processes and that related requirements be grouped into separate sections. Therefore, this change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

In general, proposed Subpart D would include three significant changes from the related provisions in the current rule that are each intended to provide a stronger deterrent to engaging in the unwanted actions specified in the proposed subpart. First, the proposed rule would increase the severity of the minimum sanctions that are required if an individual violates a licensee's or other entity's FFD policy. The more stringent sanctions would be necessary in order to strengthen the effectiveness of the rule in providing reasonable assurance that individuals who are subject to this part are trustworthy and reliable, as demonstrated by avoiding substance abuse, and by increasing the assurance that only individuals who are fit for duty are permitted to perform the job duties listed in proposed § 26.25 [Individuals subject to the fitness-for-duty program].

Second, the proposed rule would require licensees and other entities who are subject to the rule to impose the same sanctions for an FFD violation involving the abuse of alcohol as required for the abuse of illegal drugs. Impairment caused by alcohol abuse creates a risk to public health and safety that is fundamentally similar to the risk posed by the use of illegal drugs. Some licensees, however, have imposed lesser sanctions for alcohol violations, an approach that is inconsistent with the NRC's intent. Therefore, the proposed rule would rectify this situation by explicitly requiring the same minimum sanctions for abuse of alcohol as currently required for the use of illegal drugs.

Third, the proposed rule would add the sanction of permanent denial of authorization for any individuals who subvert or attempt to subvert the testing process. The current rule permits licensees and other entities to have flexibility in establishing sanctions for actions such as refusing to submit to testing and attempting to subvert the testing process by submitting an adulterated or substitute specimen. As a result, different FFD programs have imposed different sanctions and some individuals have been granted authorization or permitted to maintain authorization when they have committed such acts. However, acts to defeat the testing process indicate that an individual is not trustworthy and reliable and suggest that the individual may be engaging in substance abuse that could pose a risk to public health and safety and the common defense and security. Therefore, the proposed rule would establish a minimum sanction that all FFD programs must impose to deter attempts to subvert the testing process as well as provide reasonable assurance that individuals who are granted and maintain authorization can be trusted to comply with the rules and regulations to which they are subject.

These three changes would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, as discussed in Section IV. B. Other changes to current § 26.27(b) and (c) in proposed Subpart D would be made primarily to eliminate or modify unnecessary requirements and clarify the intent of current provisions.

Subpart E Collecting Specimens for Testing

Subpart E [Collecting specimens for testing] of the proposed rule would reorganize and amend the requirements related to collecting specimens for drug and alcohol testing that are contained in current § 26.24 [Chemical and alcohol testing] and interspersed throughout current Appendix A to Part 26. The proposed subpart would group the related requirements and present them in the order in which they would be implemented by FFD programs. The proposed rule would also eliminate some redundancies in the provisions of the current rule that are related to specimen collections, as is discussed in Section VI, with respect to the specific provisions. These proposed changes would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

In general, the procedures in this subpart would be more detailed than those in Appendix A to the current rule, and also those NRC regulations that are based upon a risk-informed, performance-based approach, for several reasons. First, the more detailed procedures in proposed Subpart E would increase the consistency of Part 26 drug and alcohol specimen collection procedures with those of other Federal agencies and therefore would take advantage of the scientific and technical advances that have been made in workplace drug and alcohol testing programs since the current Part 26 was promulgated, as discussed in Section IV. B. Second, the proposed rule would permit Part 26 FFD programs to accept and rely upon other Part 26 programs, as well as the programs of other Federal and State agencies, to a much greater extent than is permitted under the current rule. The proposed permission to rely on other programs would improve the effectiveness and efficiency of FFD programs (Goal 3 of the rulemaking) and improve 10 CFR Part 26 by eliminating or modifying unnecessary requirements (Goal 5 of the rulemaking). For example, under proposed § 26.69(b)(6), the proposed rule would permit licensees and other entities to rely upon another Part 26 program's drug and alcohol followup testing of an individual who has violated an FFD policy and is consequently required to have at least 15 followup tests within the three-year period following the violation, and is transferring from one licensee's site to another. The proposed rule would require the receiving licensee or other entity to continue the followup testing

program. However, the proposed rule would permit the licensee or other entity to accept the followup testing that was completed by the previous FFD program when determining the remaining number of followup tests to which the individual must be subject and the period of time during which the individual must continue to be subject to followup testing. Therefore, because the proposed rule would permit such reliance on other programs, more detailed requirements for conducting the activities upon which other FFD programs may rely, including drug and alcohol testing, are necessary to provide greater assurance that all Part 26 programs meet minimum standards. Third, at the public meetings discussed in Section V, industry stakeholders requested a greater level of detail in the specimen collection procedures of the proposed rule for the reasons discussed in Section IV. B.

Other major changes to the current rule's requirements for collecting specimens for drug and alcohol testing would be made to incorporate specimen validity testing requirements from the HHS Guidelines into Part 26 (Goal 1 of this rulemaking) and modify current alcohol testing requirements to improve the efficiency of FFD programs (Goal 3 of the rulemaking), while continuing to protect or enhance individuals' rights to privacy and due process under the rule (Goal 7 of the rulemaking).

Subpart F Licensee Testing Facilities

Subpart F [Licensee Testing Facilities] of the proposed rule would present detailed requirements for conducting initial urine specimen validity and drug tests at licensee testing facilities, as permitted in § 26.24(d)(1) of the current rule and § 26.31(d)(3)(i) of the proposed rule. The proposed subpart would be entitled, ''Licensee Testing Facilities,'' for brevity, but other entities who are subject to the proposed rule would be permitted to establish and operate such facilities under the proposed rule.

This new subpart would be added to group together in a single subpart the proposed requirements that are related to licensee testing facilities, which are intermixed with requirements related to drug testing at HHS-certified laboratories in Appendix A to Part 26 in the current rule. During the public meetings discussed in Section V, stakeholders requested that the proposed rule present the requirements that would be applicable to licensee testing facilities and HHS-certified laboratories in two separate subparts because, the stakeholders noted, it is not always clear which requirements apply to which type of testing facility in the current rule. The stakeholders also requested that any requirements that apply to both types of facilities would be included in both subparts so that it would be unnecessary for licensees and other entities who do not operate licensee testing facilities to review or implement any provisions in Subpart F. Although many of the requirements in this subpart would be redundant with similar requirements in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services], the proposed rule would implement these recommendations to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

The most important changes in proposed Subpart F to the current requirements for licensee testing facilities would be the addition of new requirements for licensee testing facilities to conduct urine specimen validity testing, based on similar provisions contained in the most recent revision to the HHS Guidelines (69 FR 19643; April 13, 2004). The reasons for requiring urine specimen validity testing are discussed in Section VI with respect to proposed § 26.31(d)(3)(I). As discussed in Section V, stakeholders have objected to the addition of requirements for licensee testing facilities to conduct validity testing. However, the NRC believes that it is necessary for licensee testing facilities to conduct specimen validity testing because Part 26 permits licensees and other entities to make authorization decisions based on initial drug test results from such facilities. Thus, licensees and other entities are permitted to grant authorization to an individual who has negative initial test results from pre-access testing without further analysis of the urine specimen by an HHS-certified laboratory. If the initial test results from the licensee testing facility are inaccurate because the urine specimen was adulterated or substituted, the licensee or other entity could grant authorization to an individual who poses a risk to public health and safety and the common defense and security. Similarly, if an individual who has been selected for random testing submits an adulterated or substituted specimen that is not detected by initial tests at the licensee testing facility, the individual would be permitted to maintain authorization if the results of drug testing are negative. Therefore, in order to increase the likelihood that individuals who may be using drugs and attempting to defeat the testing process are detected, and to ensure that they would not be permitted to be granted or maintain authorization, the NRC has concluded that it is necessary to require licensee testing facilities to conduct urine specimen validity tests.

However, in consideration of the increased costs and burden that are associated with instrumented initial validity testing, proposed Subpart F would permit licensee testing facilities to use non-instrumented validity testing devices to conduct ''validity screening tests'' of urine specimens, which may be a less expensive alternative than the instrumented initial validity tests required in the current HHS Guidelines. As discussed in Section VI with respect to proposed § 26.5 [Definitions], the proposed rule would use the term, ''validity screening test,'' to refer to testing using these non-instrumented devices. The term, ''initial validity test,'' would refer to instrumented validity testing.

At the same time that the HHS published its final regulations to require specimen validity testing, which would be incorporated in the proposed rule, HHS also published a proposed revision to the Guidelines (69 FR 19673; April 13, 2004) that would permit the use of validity screening devices for the detection of substitution and the presence of adulterants in urine specimens. These devices include non-instrumented devices with visually-read endpoints as well as semi-automated or automated instrumented testing devices with machine-read end points. Specimen validity tests conducted with these devices use colorimetric assays, which is the same scientific principle as the initial tests conducted at HHS-certified laboratories. Non-instrumented specimen validity devices for urine testing have been shown to detect adulterants in urine specimens and creatinine concentrations on tests that were conducted on specimens that were spiked with drug analytes. However, the results from the preliminary studies are variable. Therefore, the proposed HHS Guidelines include extensive performance testing requirements for these devices, which proposed Subpart F would also incorporate. Such performance testing is necessary to ensure that validity test results based on using these devices are accurate.

Subpart G Laboratories Certified by the Department of Health and Human Services

Subpart G [Laboratories Certified by the Department of Health and Human Services] in the proposed rule would present together in a single subpart requirements related to the HHS-certified laboratories that are used by

licensees and other entities who are subject to Part 26 for validity and drug testing. The requirements in this subpart would group together the current requirements in Appendix A to Part 26, as they relate to HHS-certified laboratories. However, the current requirements would be updated to be consistent with the HHS Guidelines that were published in the **Federal Register** on April 13, 2004 (69 FR 19643). The most important changes to the current rule's requirements for HHS-certified laboratories would be the incorporation of extensive requirements for urine specimen validity testing.

Subpart H Determining Fitness-for-Duty Policy Violations and Determining Fitness

Subpart H [Determining Fitness-for-Duty Policy Violations and Determining Fitness] in the proposed rule would reorganize, clarify, and enhance current requirements related to the decisions that MROs and other healthcare professionals must make under Part 26 to provide input to licensees' and other entities' management decisions with respect to granting and permitting an individual to maintain authorization under proposed Subpart C [Granting and Maintaining Authorization] and also with respect to imposing sanctions and taking actions to prevent an individual from performing the job duties that require an individual to be subject to this part under proposed Subpart D [Management Actions and Sanctions]. The current requirements, which are interspersed throughout the rule, would be grouped together in the proposed subpart to make them easier to locate within the proposed rule, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B. The proposed subpart would also make several significant changes to current requirements.

In general, proposed Subpart H would include more detailed requirements for determining FFD policy violations and conducting determinations of fitness than are included in the current rule. These more detailed requirements would be added in response to implementation questions that the NRC has received from licensees since Part 26 was first promulgated, ''lessons learned'' from NRC inspections of FFD programs, and the experience of other Federal agencies that similarly require workplace drug and alcohol testing. However, the NRC's primary concern in establishing more detailed requirements is to enhance the consistency in how FFD policy violations and fitness are determined among Part 26 programs. The proposed rule would permit licensees and other entities to rely on the determinations made by other Part 26 programs to a greater extent than the current rule. For example, proposed § 26.63(b) would permit licensees and other entities to rely upon a previous licensee's or other entity's determinations of fitness, as well as their reviews and resolutions of potentially disqualifying FFD information, for previous periods of authorization. The reasons for adding these permissions were discussed previously in this section, with respect to proposed Subpart C [Granting and Maintaining Authorization]. However, in order to ensure that all licensees' and other entities' determinations of FFD policy violations and fitness can be relied upon by other FFD programs, it is necessary to enhance the current requirements and establish clear minimum standards for those processes. Therefore, the proposed subpart would include greater detail to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Under the proposed rule, licensees and other entities who are subject to the rule would continue to be prohibited from imposing sanctions on an individual who has a positive confirmatory drug test result from testing at the HHS-certified laboratory until the MRO has had an opportunity to discuss the result with the individual and determines that there is no legitimate medical explanation for the positive result(s). The proposed rule would extend this requirement to the review of non-negative validity test results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed in Section VI with respect to proposed § 26.31(d)(3)(i). An MRO review of non-negative confirmatory validity test results before a licensee or other entity imposes sanctions on an individual is necessary for the same reasons that an MRO review is required of positive drug test results. That is, there may be legitimate medical reasons for the non-negative test result and the test result may not indicate that the donor has violated the FFD policy, which in this case would mean that he or she has not attempted to subvert the testing process. Requiring the MRO to review non-negative validity test results would be added to meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26. The HHS Guidelines also require the MRO to review non-negative validity test results. Therefore, adding this requirement to the proposed rule would also meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Another significant change that the proposed rule would make to current requirements is establishing a new position within FFD programs—the ''substance abuse expert'' (SAE). The SAE would be responsible for performing a determination of fitness, which is determining whether there are indications that an individual may be in violation of the licensee's or other entity's FFD policy or is otherwise unable to safely and competently perform his or her duties, in those instances in which an individual may not be fit for duty for reasons related to drug or alcohol abuse. The SAE position would be added for several reasons.

First, some MROs who provide services under Part 26 have indicated that they do not feel qualified to assess the presence and severity of substance abuse disorders, make treatment recommendations, and determine when an individual who has had a substance abuse disorder may again be able to safely and competently perform duties under this part. The focus of MRO responsibilities under Part 26 and other Federal workplace drug testing programs is on the medical evaluation of non-negative test results, which requires a knowledge of substance abuse. However, some MROs do not have the extensive knowledge of substance abuse disorders that is necessary to make determinations of fitness and treatment recommendations as required under this part. Therefore, the proposed rule would permit MROs to serve as SAEs if they meet the qualifications for this role that would be established in this subpart. But, licensees and other entities would be required to rely on other healthcare professionals who have the necessary qualifications to conduct determinations of fitness if the MRO does not meet the proposed SAE qualification requirements.

Second, during the meetings discussed in Section V, stakeholders requested that healthcare professionals, other than a licensed physician, be permitted to make determinations of fitness under the proposed rule. The stakeholders indicated that the costs of using only licensed physicians are prohibitive and noted that a license to practice medicine does not guarantee that a physician is knowledgeable about substance abuse disorders. The NRC concurs that healthcare professionals

other than licensed physicians may have the requisite knowledge and skills to serve as SAEs under the proposed rule. Therefore, the proposed rule would define the position of SAE in terms of the knowledge and skills required, and permit healthcare professionals other than licensed physicians to serve in this role.

Third, under the proposed rule, FFD programs would be permitted to accept determinations of fitness and treatment plans from other Part 26 programs, if an individual who has had a substance abuse problem will be granted authorization by another licensee or entity. Consequently, detailed requirements for the qualifications and responsibilities of the SAE are necessary to ensure consistency among FFD programs. Detailed requirements for the qualifications and responsibilities of the SAE are necessary because of the key role the SAE would play in assuring the common defense and security and public health and safety when making a determination of fitness upon which licensees and other entities will rely when making authorization decisions. It is critical that SAEs understand the potential impact on the common defense and security and public health and safety when determining that an individual who has had an active substance abuse problem has resolved the problem and is again worthy of the public's trust. A sophisticated understanding of substance abuse problems and the types of adverse behaviors they may involve, including knowledge of the research literature and clinical experience, is necessary to inform the SAE's clinical judgements in these circumstances.

Many of the provisions in the proposed subpart would be adapted from related DOT requirements regarding the ''substance abuse professional'' [49 CFR Part 40, Subpart O; 65 FR 41944; August 9, 2001]. The SAE role is not defined in current Part 26.

Subpart I Managing Fatigue

Subpart I [Managing Fatigue] of the proposed rule would strengthen the effectiveness of FFD programs at nuclear power plants in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management of worker fatigue. Because the overall rationale for including Subpart I, Managing Fatigue, in Part 26, is detailed and extensive, this discussion is presented separately in Section IV. D.

Subpart J Recordkeeping and Reporting Requirements

Subpart J [Recordkeeping and Reporting Requirements] would be added to the proposed rule to reorganize the current rule's requirements for maintaining records and submitting reports to the NRC. The new subpart would combine and amend two sections of the current rule: Section 26.71 [Recordkeeping requirements] and § 26.73 [Reporting requirements], and would incorporate the record retention requirements of current §§ 26.21(b), 26.22(c), and 26.80(c). This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, by grouping related requirements together in the proposed subpart.

Major changes to the current rule's requirements for recordkeeping and reporting would reflect (1) the addition of requirements for specimen validity to the proposed rule; (2) the addition of requirements for managing worker fatigue at nuclear power plants; and (3) a relaxation of the required frequency with which Part 26 programs must submit FFD program performance reports to the NRC from bi-annually to annually.

Subpart K Inspections, Violations, and Penalties

Subpart K [Inspections, Violations, and Penalties] would be added to the proposed rule to combine into one subpart current §§ 26.70 [Inspections], 26.90 [Violations] and 26.91 [Criminal penalties]. These sections would be grouped together in one subpart because they each establish requirements related to the NRC's oversight of the implementation of FFD programs. Proposed § 26.221 [Inspections] would retain the requirements in current § 26.70. Proposed § 26.223 [Violations] would retain the requirements in current § 26.90 [Violations]. Proposed § 26.225 [Criminal penalties] would retain the requirements in current § 26.91 [Criminal penalties].

D. Inclusion of Worker Fatigue Provisions in 10 CFR Part 26

The NRC has determined that the effectiveness of FFD programs in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security should be strengthened by establishing clear and enforceable requirements for the management of worker fatigue. Subpart I, Managing Fatigue, of the proposed rule would include these requirements and establish an integrated approach to fatigue management, with fatigue prevention, detection, and mitigation as the fundamental components. As discussed further in this section, the proposed requirements in Subpart I would provide a substantial increase in the protection of public health and safety and common defense and security. In determining the provisions of this proposed rule, the NRC has taken into consideration the effects of fatigue; the specific work practices of the nuclear power industry that contribute to and mitigate fatigue; the inadequacy of the current regulatory framework; the excessive hours currently worked by many nuclear power workers; and the practices of other industries and countries for regulating work hour limits. In addition, many public meetings were held with the nuclear industry and the public to discuss draft provisions for the proposed rule. These interactions are discussed in detail in Section V of this document.

The NRC has determined that an integrated approach is necessary to effectively manage worker fatigue because individuals experience fatigue for many reasons, including long work hours, inadequate rest, and stressful or strenuous working conditions. Shiftwork, home-life demands, and sleep disorders can all contribute to inadequate sleep and excessive fatigue. Individual differences in worker tolerances to these conditions also influence worker fitness for duty. As a consequence, fatigue is a complex phenomenon that requires an integrated approach to be managed effectively. The requirements in proposed Subpart I were developed based upon the premise that fatigue management requires the collaboration of individual workers and licensees.

Each of the proposed requirements in Subpart I are discussed in detail in Section VI. However, because proposed Subpart I presents an integrated fatigue management approach, this section discusses the principal findings that led to the decision to include fatigue management provisions in Part 26, as well as supporting information on the causes and problems with worker fatigue in the nuclear power industry.

The Commission approved a rulemaking plan to include worker fatigue provisions for nuclear power plants in 10 CFR Part 26 on January 10, 2002, (SRM–SECY–01–0113), as described in Section I. Since that time, the NRC has continued to analyze the need for work-hour provisions in the proposed rule. The considerations listed in the numbered paragraphs that follow summarize the NRC's considerations

concerning the appropriate regulatory action to address the potential for worker fatigue to affect public health and safety and the common defense and security. These considerations include:

(1) The research literature demonstrating the substantive effects of fatigue and decreased alertness on an individual's ability to safely and competently perform his or her duties;

(2) The prevalence of conditions that contribute to worker fatigue in the U.S. nuclear power industry;

(3) With the exception of orders limiting the work hours of security personnel, the NRC's current regulatory framework does not include consistent or readily enforceable requirements to address worker fatigue;

(4) Reviews of industry control of work hours have repeatedly identified practices that were inconsistent with the NRC's Policy on Worker Fatigue, including excessive use of work hours and work-hour limit deviations;

(5) The current regulatory framework includes requirements that are inadequate and incomplete for effective fatigue management;

(6) Ensuring effective management of worker fatigue through rulemaking would substantially enhance the effectiveness of FFD programs, but additional orders are not presently warranted to ensure adequate protection of public health and safety or the common defense and security; and

(7) Addressing the fatigue of workers in safety-critical positions through regulation is consistent with practices in foreign countries and other industries in the U.S.

Each of these considerations is discussed in greater detail below.

(1) *Fatigue and decreased alertness can substantively degrade an individual's ability to safely and competently perform his or her duties.*

The NRC previously noted in its ''Policy Statement on the Conduct of Nuclear Power Plant Operations,'' dated January 24, 1989, (54 FR 3424), that ''nuclear power plant operators on each shift must have knowledge of those aspects of plant status relevant to their responsibilities to maintain their working environment free of distractions, and using all their senses, be alert to prevent or mitigate any operational problems.'' The degradation in an individual's cognitive functioning resulting from inadequate rest includes, but is not limited to, a reduced ability to sustain attention; maintain situational awareness; make timely and conservative decisions; communicate; and work effectively as a team member. Such degradations in performance, if exhibited by individuals performing risk-significant functions, can adversely affect the safety and security of a nuclear power plant.

The NRC has evaluated the research available on the degradation of worker abilities that are important to safe plant operation. The research supports the fatigue management provisions in Subpart I. Many of the specific research citations are listed in detail in Section VI. The following is a discussion of the fundamental concerns associated with worker fatigue, and some of the overall research that forms the basis for the integrated fatigue management approach in Subpart I.

Many studies have shown that fatigue impairs human alertness and performance (*e.g.*, Alluisi and Morgan, 1982; Rosa, 1991; Scott, 1990; Dinges, 1992; Dinges, 1995; Dawson and Reid, 1997; Bobko, *et al.*, 1998; Harrison and Horne, 2000; Williamson and Feyer, 2000). The lack of adequate days off and extended workdays (overtime) can result in a cumulative sleep debt (*i.e.*, the difference between the amount of sleep an individual needs and the amount of sleep that individual actually obtains) and performance impairment (Webb and Agnew, 1974; Baker, *et al.*, 1994; Colquhoun, *et al.*, 1996; Tucker, *et al.*, 1999; Williamson and Feyer, 2000; Department of Transportation (DOT), May 2, 2000, 65 FR 25546). Across a broad range of industries, studies concerning extended work hours suggest that fatigue-induced personnel impairment can increase human error probabilities by a factor of more than 2 to 3 times (Hanecke, *et al.*, 1998; Colquhoun, *et al.*, 1996; Akerstedt, 1995; U.S. DOT, 49 CFR Parts 350, *et al.*, Proposed Rule, May 2, 2000, 65 FR 25544).

Studies of the nuclear power industry indicate that normal daily variations in alertness associated with human circadian rhythms (*i.e.*, physiological processes that vary on an approximate 24-hour cycle) may be responsible for daily variations in the incidence of personnel errors at nuclear power plants (Bobko, *et al.*, 1998; Dorel, 1996; Maloney, 1992). The findings of these studies are consistent with the results of a survey of more than 100 nuclear power plant shift supervisors—over 90 percent stated that they notice times of day, and days in the schedule, during which control room operators are less alert, less vigilant, or make more mistakes (Baker, *et al.*, 1990 [EPRI NP–6748]). These studies suggest that, despite safeguards to ensure correct and reliable human performance, factors that influence alertness may increase the incidence of human errors in nuclear power plants.

Fatigue has generalized effects on human performance capabilities, and is associated with performance decrements at a base level, across a variety of tasks (Dinges, 1995). Fatigue can impair both physical and cognitive (*i.e.*, mental) functioning.

Generally, cognitive task performance is affected more readily by fatigue than physical or psychomotor tracking performance (Krueger, 1989; 1991). General cognitive fatigue decreases an individual's ability to remain alert, process complex information, and correctly grasp a complex set of circumstances. Fatigue has been shown to cause memory problems, slowed responses, lapses and false responses (Williams, *et al.*, 1959; Morgan, *et al.*, 1974; Dinges, 1992; Dinges, 1995). Many of the cognitive tasks performed by nuclear power plant personnel that are important to the protection of public health and safety and the common defense and security rely on their ability to sustain attention, analyze problems, make clear decisions, and communicate and work as a team. The following effects of fatigue on cognitive abilities are the primary focus of the proposed fatigue management requirements:

(a) *Sustaining attention*—Vigilance and attention to detail are fundamental for plant safety, whether an individual is operating or maintaining equipment important to plant safety, performing surveillance procedures in the plant, monitoring system status in the control room, or monitoring plant security systems or barriers.

Tasks requiring sustained attention (*e.g.*, vigilance tasks) are among the most susceptible to fatigue-induced degradation (Monk and Carrier, 2003). The sensitivity to fatigue of vigilance tasks is one of the primary reasons that tests, such as the psychomotor vigilance task (Dinges, *et al.*, 1997; Doran, *et al.*, 2001), are standard measurement tools used in studies of the effects of sleep deprivation and fatigue. Of particular note are research findings showing that, in operational settings, individuals may experience periods of sleep up to a few seconds (called microsleeps), during which they fail to respond to external stimuli, and are completely unaware that these episodes have occurred (Cabon, *et al.*, 2003; Priest, *et al.*, 2001; Summala, *et al.*, 1999).

(b) *Decision-making*—Conservative decision-making is a cornerstone of safe nuclear power plant operations. Fatigue has been associated with more risky strategies and decreases in the effort individuals exert (Schellekens, *et al.*, 2000). Furthermore, Harrison and Horne (2000) reviewed the impact of sleep deprivation on decision-making and

reported that, contrary to popular belief, sleep deprivation impairs decision-making even if individuals try to compensate for lack of sleep when responding to heightened stimulation. As noted by Cabon, *et al.* (2003), studies have shown reductions in aircrew alertness, even during the critical descent phase. These findings suggest that the alerting stimuli of off-normal conditions (*e.g.*, landing an airplane, acknowledging control room annunciators) may not fully negate the effects of fatigue on performance. The National Transportation Safety Board (NTSB) reviewed the performance of flight crews involved in 37 major accidents and found that those crew members who had been awake longer than 12 hours before their accidents made more errors overall, and specifically more tactical decision errors, than did crew members who had been awake for less time (NTSB, 1994).

(c) *Problem solving*—Perseveration is a term used to describe poor problem solving performance, characterized by an individual or group of individuals maintaining a faulty diagnosis or mitigation plan despite contrary information. An example of perseveration from the nuclear power industry was the initial response by plant operators to events at Three Mile Island Unit 2 in 1979. The operators' initial response was based on a faulty diagnosis of the plant condition (the operators failed to recognize they were dealing with a loss of coolant accident), which the operators maintained throughout the first 2 hours of the event in the face of numerous conflicting indications. Many factors contributed to human performance problems during the Three Mile Island accident and the NRC is not suggesting that operator fatigue was a contributing factor. However, fatigue is one factor that has been found to contribute to this type of performance degradation (Harrison and Horne, 2000), which may have serious consequences for public health and safety. Sleep-deprived workers fail to appropriately allocate attention, set task priorities, or sample for sources of potentially faulty information (Hockey, 1970; Krueger, 1989). Mental fatigue also contributes to decreased originality and flexibility in problem solving and sub-optimal planning (Van der Linden, *et al.*, 2003; Lorist, *et al.*, 2000; Horne, 1988).

(d) *Communication and teamwork*—Fatigue affects skills important to written and oral communication and teamwork. Fatigue degrades speech articulation, verbal fluency, grammatical reasoning (the ability to process oral and written instructions), and memory (Harrison and Horne, 1997; 1998). Studies of individuals in simulated combat and command and control conditions have shown that fatigue slows the encoding, decoding, and transcription of information (Banderet, 1981; Angus and Heslegrave, 1985). Fatigued individuals also tend to be less communicative and have greater difficulty performing multiple tasks concurrently, as demonstrated in simulated aircraft cockpit tasks requiring monitoring and communications (Pascoe, *et al.*, 1995; Harrison and Horne, 2000). These effects have been found in the analysis of incidents and accidents. In a study of major aircraft accidents, crews that had been awake longer (an average of 13.8 hours for captains and 13.4 hours for first officers) made significantly more procedural and tactical decision errors than crews that had been awake for a shorter period (an average of 5.3 hours for captains and 5.2 hours for first officers) (NTSB, 1994). Similar to control room personnel in nuclear power plants, aircraft cockpit crews make extensive use of secondary checks to verify that decisions and performance are correct, and to mitigate the consequences of errors. Although the difference was not statistically significant, analysis of the crew errors indicated that crews that had been awake longer made nearly 50 percent more errors in failing to challenge a faulty action or inaction by another crew member. These studies highlight how fatigue cannot only degrade the fitness of an individual, but also the overall performance of a crew.

Although fatigue has long been widely recognized as degrading performance, recent research has helped characterize the magnitude of these effects relative to a historical FFD concern: impairment from alcohol intoxication. The current provisions in 10 CFR Part 26 prohibit the use of alcohol on site and within several hours before a tour of duty, and establish alcohol testing requirements for personnel on duty. The NRC established these requirements based on the recognition that alcohol can have significant adverse effects on a worker's ability to safely and competently perform his or her duties. Recent studies have shown that fatigue can cause performance degradations that are comparable to the levels observed from blood alcohol concentrations (BACs) in excess of those that would result in a positive breath alcohol test under the current provisions of 10 CFR Part 26. In those studies, individuals who were awake for 17–19 hours had cognitive and psychomotor performance comparable to individuals with a BAC of 0.05 percent (Dawson and Reid, 1997; Williamson and Feyer, 2000). Part 26 establishes a breath alcohol cutoff level of 0.04 percent. The NRC considers the insight that fatigue can impair a worker at levels comparable to those prohibited for alcohol to be particularly significant.

(2) *Conditions that contribute to worker fatigue are prevalent in the U.S. nuclear power industry.*

Fatigue may result from an individual remaining awake continuously for an excessive period of time, or from the individual obtaining an inadequate amount or quality of sleep, or both. Conditions that contribute to worker fatigue include:

(a) *Extended work shifts with five or more consecutive work days*—Although the effects of shift length on worker performance is influenced by the nature of the task, various studies have shown that task performance declines after 12 hours on a task (Rosa, 1991; Folkard, 1997; Dawson and Reid, 1997). Other studies have shown that the relative risk of having an accident increases dramatically after 9 consecutive hours on the job (Colquhoun, *et al.*, 1996; Hanecke, *et al.*, 1998; U.S. DOT, 49 CFR Parts 350, *et al.*, Proposed Rule, May 2, 2000, 65 FR 25544). The effects of extended working hours on worker performance can be exacerbated when many extended shifts are scheduled in succession.

The use of 12-hour shifts has become increasingly common at U.S. nuclear power plants. Schedules that include 5 or more 12-hour shifts in succession during routine operations are sometimes popular with workers because they allow a long sequence of days off. However, scheduling more than 4 consecutive 12-hour shifts is not a recommended means of managing fatigue (Baker, *et al.*, 1990 [EPRI NP–6748]; NUREG/CR–4248, ''Recommendations for NRC Policy on Shift Scheduling and Overtime at Nuclear Power Plants''). As noted in the 2000 Sleep in America Poll, ''waking up unrefreshed'' was more likely to be reported by individuals working more than 60 hours per week (58 percent vs. 42 percent of those working 41–60 hours per week and 39 percent of those working 31–40 hours) (National Sleep Foundation, 2000).

During the public meetings described in Section V, industry stakeholders noted that the use of 6 or more consecutive 12-hour shifts is now standard practice during plant outages. In SECY–01–0113, the NRC staff reported that more than 80 percent of the authorizations written by licensees

to exceed the technical specification work hour limits during outages were for exceeding 72 hours (*e.g.*, six 12-hour shifts) in a 7-day period. The NRC's more recent review of deviations authorized at six plants for refueling outages during 2003 and 2004 also indicates that deviations from the limit of 72 hours in 7 days continue to account for more than 80 percent of the deviations authorized. During these meetings, industry stakeholders also reported that, during outages, some licensees have scheduled personnel for three or more weeks of consecutive 12-hour shifts without intervening days off.

(b) *Extensive Overtime*—Many research studies report that excessive working hours cause worker fatigue (Akerstedt, 1995b; Rosa, 1995; Buxton, *et al.*, 2002). The U.S. nuclear power industry makes extensive use of overtime, creating a combined effect of long work hours with reduced break periods. As noted in SECY–01–0113, at approximately one-fourth of the sites, more than 20 percent of the personnel covered by working hour limits work more than 600 hours of overtime annually. This amount of overtime is more than two to three times the level permitted for personnel at some foreign nuclear power plants and more than twice the level recommended by an expert panel in 1985 (NUREG/CR–4248). In SECY–01–0113, the NRC also noted that some licensees authorized hundreds to several thousand deviations from the limits of 16 hours of work in any 24-hour period, 24 hours of work in any 48-hour period, 72 hours of work in a 7 day period, and from the minimum break requirement of 8 hours between work periods. The NRC also noted the continued excessive use of such deviations in its survey of six plants in 2004.

(c) *Shiftwork*—The nuclear power industry is a round-the-clock operation requiring individuals to be awake and working at times when they would normally be asleep. Although individuals can function in these circumstances, human alertness and task performance are cyclically affected by a daily biological clock, which runs on about a 24-hour (circadian) cycle, as it assists in timing numerous physiological and psychological phenomena (such as core body temperature, the daily release of various hormones, mood swings, and wake-sleep cycle) (Liskowsky, *et al.*, 1991). The circadian trough, or lowest levels of function reflected in, for example, alertness, performance, subjective mood, and body temperature, occurs around 3 a.m. to 5 a.m., with many human functions showing reduced levels between 12 a.m. and 6 a.m. Sleepiness is most severe between 3 and 5 a.m., with a less marked but significant expression again between 3 and 5 p.m.

There is a substantial scientific literature on circadian variations in alertness that clearly demonstrates the significant roles that worker fatigue, sleep loss, and circadian rhythms play in contributing to errors and accidents (Kryger, *et al.*, 1994; Akerstedt, 1995a; Dinges, 1995; Folkard, 1997; Comperatore and Krueger, 1990; Miller and Mitler, 1997). These findings range from reduced response speed on a variety of tasks, to missing warning signals, to minor hospital incidents and accidents (Krueger, 1994). In addition, as previously described in this section, circadian variations have also been noted in studies of the incidence of personnel errors at nuclear power plants (Bobko, *et al.*, 1998; Dorel, 1996; Maloney, 1992) and noted in observations by a large number of nuclear power plant shift supervisors (Baker, *et al.*, 1990 [EPRI NP–6748]).

In addition to causing individuals to perform work at periods of depressed alertness, shiftwork also conflicts with circadian variations in alertness by requiring individuals to sleep during naturally occurring periods of increased cognitive arousal. Circadian rhythms, and naturally occurring tendencies for sleep and wakefulness, do not fully adapt to shiftwork schedules. In addition, daylight, noise and the ''regular day'' schedules of other family members challenge the ability of shiftworkers to obtain adequate rest. As a result, shiftworkers generally obtain less sleep, and report a higher incidence of sleepiness and sleep-related complaints. For example, in a survey of 1,154 U.S. adults, the National Sleep Foundation (NSF) found that shiftworkers, on average, get less sleep (6 hours, 30 minutes) than regular day workers (6 hours, 54 minutes). Almost half of the shiftworkers they surveyed obtained less than 6.5 hours of sleep per ''night'' during the work-week, 30–90 minutes less than recommended by most sleep experts. In comparison to regular day workers, shiftworkers were more likely to be sleepy at work 2 or more days per week (34 percent vs. 23 percent) (National Sleep Foundation, 2000). Many studies have demonstrated that decreased performance and increased errors and accidents are associated with night work and are affected by varying sleep schedules and durations of sleep periods (*e.g.*, Balkin, *et al.*, 2000).

The challenge for shiftworkers to remain alert during the early morning hours of a shift can be exacerbated by extended shift lengths, overtime, and the inability of many shiftworkers to obtain adequate sleep during the day (Hanecke, 1998). The powerful drive for sleep that is associated with circadian factors, and the fact that shiftwork is a daily influence on the alertness of all shiftworkers at nuclear power plants, has been demonstrated by a number of recent events. For example, there have been instances of operators falling asleep in the control rooms at the Pilgrim nuclear power station (2004) and the test and research reactor at the Massachusetts Institute of Technology (2003), as well as a security officer falling asleep at the Braidwood nuclear power plant while driving a patrol vehicle (2004), despite these individuals recognizing the potential safety and disciplinary consequences.

(d) *Early start times and extended commutes*—Although many plant personnel do not work rotating shifts, start times before 7 a.m. can interfere with a worker's ability to obtain adequate rest if the schedule is not aligned with his or her circadian cycle and naturally occurring tendency for sleep and wakefulness. In addition, long commutes to remote work sites such as nuclear power plants, which are frequently located in rural areas and distanced from major population centers, contribute to the potential for fatigue associated with early start times.

(e) *Sleep disorders*—Sleep disorders, such as sleep apnea, insomnia, and restless leg syndrome (*i.e.*, a condition that is characterized by uncomfortable or unpleasant sensations in the legs, causing an overwhelming urge to move them, often contributing to difficulty in staying or falling asleep), are conditions that can significantly reduce the quantity and quality of sleep that individuals are able to obtain, affect an individual's ability to remain alert, and ultimately degrade an individual's ability to safely and competently perform his or her duties (Kryger, *et al.*, 1994; Lewis and Wessely, 1992). These factors are not effectively addressed by limits on working hours in the absence of other fatigue management practices. Although the NRC does not have data for the incidence of sleep disorders that is specific to U.S. nuclear power plant workers, in the general U.S. population, such conditions are not uncommon. For example, the prevalence of sleep apnea is estimated to be 4 percent for adult males and 2 percent for adult females (Strollo and Rogers, 1996). The incidence of sleep apnea may in fact be higher for shiftworkers at power plants, as this condition is more common in middle-age adult males than in the

general population. A survey by the NSF of 1,154 adults living in households in the continental U.S. found self-reports of sleep apnea were more common from shiftworkers than regular day workers (15 percent vs. 9 percent) (National Sleep Foundation, 2000). Similarly, the NSF found that shiftworkers reported a higher incidence of insomnia (66 percent vs. 55 percent) than regular day workers.

Although worker motivation can mitigate to a limited degree the effects of fatigue, fatigue has a physiological basis, including changes in glucose metabolism in the brain (Wu, *et al.*, 1991; Thomas, *et al.*, 2000), and such changes are beyond the individual's control. In addition, several studies have suggested caution with regard to the ability of individuals to self-monitor their abilities to safely and competently perform their duties when fatigued (Dinges, *et al.*, 1997; Belenky, *et al.*, 2003; Akerstedt, 2003). These studies note that individuals experience microsleeps without being aware of their lapses in attention and underestimate their propensity for uncontrolled sleep episodes. As a consequence, a worker's motivation to remain alert does not provide reasonable assurance that an individual will be able to safely and competently perform his or her duties.

Considering the above factors, the NRC believes that fatigue can have a significant adverse effect on worker abilities. Further, the likelihood of a nuclear power plant worker being impaired from fatigue is not trivial, and potentially greater than the likelihood of impairment from drugs and alcohol, which the NRC currently requires licensees to address through their FFD programs. Therefore, the NRC believes that regulatory action is warranted to ensure that fatigue is adequately addressed through licensee FFD programs. Further, the NRC believes that rulemaking is the appropriate regulatory action for the following reasons:

(3) *With the exception of orders limiting the work hours of security personnel, the NRC's current regulatory framework does not include consistent or readily enforceable requirements to address worker fatigue.*

The principal components of the current regulatory framework for matters pertaining to working hours and fatigue for non-security personnel are (a) NRC's Policy on Worker Fatigue, as issued on June 15, 1982, in GL 82–12, and (b) plant technical specifications related to this policy statement, and (c) certain requirements of 10 CFR Part 26.

As part of the assessment of PRM–26–2, in which Barry Quigley petitioned for rulemaking to establish enforceable requirements addressing fatigue of workers at nuclear power plants, the NRC reviewed and assessed the implementation and enforceability of the NRC's current regulatory framework applicable to worker fatigue, including licensee technical specification requirements for the administrative control of work hours. This review was documented in detail in Attachment 1 to SECY–01–0113. The NRC continued this evaluation during development of this proposed rule, and the principal findings include:

(a) *NRC's Policy on Worker Fatigue*—NRC guidance documents do not prescribe requirements. Guidance documents establish policy or provide advice on meeting a regulatory requirement. As a result, the policy is enforceable only to the extent that the guidelines have been incorporated into a license condition or technical specification requirements. For the three nuclear power plant sites who have not incorporated the guidelines from the NRC's Policy on Worker Fatigue into a license condition or technical specification requirement, the guidelines are unenforceable. These plant sites have implemented the concept using other administrative controls that the NRC has determined to be adequate. However, had the NRC determined that the controls were inadequate, it would have no basis for taking enforcement action.

(b) *Technical Specifications*—For those licensees who have incorporated the NRC's Policy on Worker Fatigue into a license condition or technical specifications, consistent enforcement is complicated by the following factors:

—The language in plant technical specifications is largely advisory (*e.g.*, an individual should not be permitted to work more than 16 hours straight) and key terms have not been defined. This deficiency results in inconsistent interpretation and implementation of technical specification requirements by licensees, as well as difficulty for the NRC in enforcing the requirements. For example, many technical specifications use the terms ''routine heavy use of overtime,'' ''unforeseen problems,'' and ''temporary basis.'' The NRC has not defined any of these terms and has not consistently pursued enforcement on the basis of the amount or frequency of overtime authorized.

—The technical specifications have inconsistent levels of detail from one nuclear power plant licensee to another. Only three-quarters of the licensees' technical specifications include the quantitative working hour limit guidelines of the NRC's Policy on Worker Fatigue.

—The technical specifications contain varying scopes of requirements. Some plant technical specifications require periodic reviews of overtime approvals to ensure that excessive hours have not been assigned, while other technical specifications contain no equivalent requirements. Although the observed variability in the controls does not by itself present a safety concern, such variability is inconsistent with establishing a uniform level of assurance that personnel are not in a fatigued condition that could significantly reduce their mental alertness and decision-making capability.

—Licensees have inconsistently interpreted the scope of personnel who must be subject to the technical specification work hour limits. The NRC's Policy on Worker Fatigue applies to personnel who are performing safety-related functions. The NRC's review of work hour data gathered by NEI regarding the work hours of personnel subject to the technical specifications (Nuclear Energy Institute, 2000) identified variation in the numbers and types of personnel covered by these controls. A limited number of sites may not be applying work hour controls to all personnel performing safety-related functions. At least two nuclear plant sites do not apply the work hour controls to any maintenance personnel even though GL 83–14, ''Definition of Key Maintenance Personnel (clarification of GL 82–12),'' issued March 7, 1983, defined key maintenance personnel to include individuals who work on safety-related equipment.

—The basic measure used to determine whether an individual's work hours are within or above the technical specification limits is not implemented consistently from one nuclear power plant to another. Work hours included within the limits at some nuclear power plants are not included at others, effectively creating substantively different work hour limits among plants.

(c) *10 CFR Part 26, ''Fitness for Duty Programs''*—The general performance objectives of § 26.10 require that licensees provide ''reasonable assurance that nuclear power plant personnel * * * are not * * * mentally or physically impaired from any cause, which in any way adversely affects their ability to * * * perform their duties.''

Although 10 CFR Part 26 contains specific requirements pertaining to alcohol and drug usage, it does not include prescriptive requirements regarding fatigue. Rather, § 26.20 uses general, non-mandatory language to state that the FFD policy ''should'' address other factors that can affect a worker's ability to safely and competently perform his or her duties, ''such as mental stress, fatigue, and illness.'' As a result, it is difficult for the NRC to justify a violation of the regulation based on a licensee's failure to limit overtime hours. In addition, without a numerical limit on overtime hours, or a provision limiting overtime, a range of overtime practices could be viewed as ''reasonable,'' and therefore in compliance with the regulation.

In summary, the broad and non-prescriptive provisions of Part 26, and the technical specifications and license conditions pertaining to fatigue, in the absence of clearly defined terms or measures of fatigue, make it difficult for the NRC to enforce worker fatigue requirements and working hours limits in an effective, efficient, and uniform manner that ensures that all licensees provide reasonable assurance that workers are able to safely and competently perform their duties. The NRC believes that a consistent fatigue management program and its uniform implementation across the industry is essential, and the most effective regulatory mechanism is to incorporate worker fatigue into 10 CFR Part 26.

(4) *Reviews of industry control of work hours have repeatedly identified practices that were inconsistent with the NRC's Policy on Worker Fatigue, including excessive use of work hours and work hour limit deviations.*

The policy states, in part, ''Enough plant operating personnel should be employed to maintain adequate shift coverage without routine heavy use of overtime.'' Surveys and expert panels have suggested that tolerance for overtime is generally limited to 300–400 hours of overtime per year (ADAMS Accession No. ML05270310; NUREG/CR–4248). Baker, *et al.* (1994) reviewed the hours worked by nuclear power plant operations, technical, and maintenance personnel during 1986, four years after the NRC issued its policy. Based on a sample of 63 percent of U.S. nuclear power plants operating at that time, Baker and colleagues found that operations personnel averaged more than 500 hours of overtime annually at 20 percent of the plants, and more than 700 hours of overtime at 9 percent of the plants. Technical personnel averaged more than 500 hours of overtime annually at 30 percent of the plants, and more than 700 hours of overtime at 18 percent of the plants. Maintenance personnel averaged more than 500 hours of overtime annually at 80 percent of the plants and more than 700 hours of overtime at 14 percent of the plants.

The NRC's Policy on Worker Fatigue includes provisions for licensees to authorize deviations from the NRC's work and rest guidelines for individual workers in ''very unusual circumstances.'' On June 10, 1991, following several NRC inspections noting concerns related to licensee work hour control, the NRC issued Information Notice (IN) 91–36, Nuclear Power Plant Staff Working Hours, to alert licensees of potential problems resulting from inadequate controls to prevent excessive working hours. The conditions cited in the notice included an event attributed to fatigue, excessive use of deviations and overtime, and overtime deviations authorized after the fact. Subsequent NRC reviews completed in 1999 and 2001 have identified continued problems with industry control of work hours. In 1999 the NRC reviewed licensee event reports and NRC inspection reports from January 1994 through April 1999. The NRC found that only a few events of limited risk significance had been attributed to fatigue. However, the staff found several instances each year in which licensee use of overtime appeared to be inconsistent with the general objectives or specific guidelines of the NRC's Policy on Worker Fatigue.

The Nuclear Energy Institute (NEI) conducted a survey in the summer of 2000 concerning industry control of work hours for personnel subject to the technical specification requirements (letter dated August 29, 2000, from J.W. Davis, NEI, to G.T. Tracy, NRC, ADAMS Accession No. ML003746495). Forty-seven sites responded to the survey, providing data from 1997–1999. The NRC staff's review of the data is documented in Attachment 1 to SECY–01–0113. The NRC evaluated the results of the survey concerning overtime and found that 8 of 36 sites providing data had more than 20 percent of the personnel covered by the policy working in excess of 600 hours of overtime per year. Considering all plants that provided data, the percentage of personnel working in excess of 600 hours of overtime increased from 7 percent in 1997 to 11 percent in 1999. The percentage of licensed operators working in excess of 600 hours increased from 13 percent in 1997 to more than 16 percent in 1999. The NRC believes these percentages represent excessive use of overtime in the nuclear industry.

The NRC also reviewed the data collected by NEI concerning deviations, which showed that approximately one-third of the respondents were authorizing more than a thousand, to as many as 7,500, deviations in a year to exceed the policy guidelines. The frequency of deviations did not appear to be consistent with either the specific guidelines or the general objective of the policy. As previously described in this section, the policy permits deviations from the guidelines in ''very unusual circumstances.''

Subsequent to the Commission's decision to initiate rulemaking for worker fatigue, the NRC staff also obtained data from six sites in 2004. Those data indicated that between 95 and 603 deviations, with an average of 311 deviations, were issued for individuals. The data were provided by the six sites for each plant's most recent refueling outage and one month of power operation, and therefore do not reflect the total number of deviations issued for individuals during all of 2004, except for one of the six sites that provided its deviation data (101 deviations) for all of 2004. Data on the deviations from 2004 are reported in detail in Appendix 3 of the draft Regulatory Analysis. The analysis is available as discussed above under the **ADDRESSES** heading. Single copies may be obtained from the contact listed above under the **FOR FURTHER INFORMATION CONTACT** heading. The NRC believes that licensee use of deviations and overtime at some sites is excessive, and does not represent the intent of the NRC's Policy on Worker Fatigue.

In addition to excessive work hours and work hour guideline deviations, the NRC has recently identified other concerns related to licensee policies and practices applicable to worker fatigue. On May 10, 2002, the NRC issued Regulatory Issue Summary (RIS) 2002–007, ''Clarification of NRC Requirements Applicable to Worker Fatigue and Self-Declaration of Fitness-For-Duty.'' The NRC issued the RIS following several allegations made to the NRC regarding the appropriateness of licensee actions or policies related to individuals declaring they are not fit due to fatigue. These concerns indicate a need to ensure that individuals and licensees clearly understand their responsibilities with respect to self-declarations of worker fatigue. The proposed rule would establish requirements to address this need.

(5) *The current regulatory framework includes requirements that are inadequate and incomplete for effective fatigue management.*

a. The NRC's Policy on Worker Fatigue did not establish clear expectations for the control of work hours. As previously noted in this section, the NRC did not define key terms of the policy, and, as a consequence, implementation has been varied across the industry.

b. Certain policy guidelines and technical specification requirements are inadequate for reasonable assurance that individuals remain capable of safely and competently performing their duties. For example, the requirement for an 8 hour break between work periods would be revised to a 10 hour break. The basis for the need to revise this break period is described in detail in Section VI with respect to proposed § 26.199(d)(2)(I).

Further, the specific work hour guidelines of the policy, and most technical specification requirements for the administrative control of work hours, are principally focused on acute fatigue, and do not adequately address the longer term control of work hours and the cumulative fatigue that can result from prolonged periods of extended work hours. Acute fatigue results from restricted sleep, sustained wakefulness, continuous task demands, or other issues over the past 24 hours or more. Cumulative fatigue results from inadequate rest over consecutive sleep-wake periods when the worker obtains less sleep than he or she requires. An individual incurs a sleep debt for each day or night during which the worker obtains insufficient sleep. If the individual continues to obtain insufficient sleep, this debt accumulates over successive days, resulting in increasing fatigue and impairment (Belenky, et al., 2003).

The inadequacy of the current regulatory framework for addressing cumulative fatigue became particularly apparent in the months following the terrorist attacks of September 11, 2001. As described in Section VI with respect to proposed § 26.199(f)(2), the NRC received numerous allegations from nuclear security officers that certain licensees required them to work excessive amounts of overtime over long periods due to the post-September 11, 2001, threat environment. These individuals questioned their readiness and ability to perform their required job duties due to the adverse effects of cumulative fatigue. The NRC reviewed the actual hours worked by security personnel and determined that, in the majority of cases, individual work hours did not exceed the guidelines specified in the NRC's Policy on Worker Fatigue, but the review confirmed that individuals had been working up to 60 hours per week for extended periods. The concerns expressed by individuals regarding their FFD, in light of work schedules that did not exceed the specific guidelines of the policy, as well as relevant technical research supporting the basis for cumulative fatigue, led the NRC to conclude that the work hour guidelines of the policy are inadequate for addressing cumulative fatigue. The NRC obtained additional worker feedback supporting this conclusion through a review of worker fatigue concerns and work hours during a long-term outage at the Davis Besse nuclear plant (NRC Inspection Report 05000346/2004003, dated March 31, 2004, ADAMS Accession No. ML040910335).

The comprehensive fatigue management approach in Subpart I, Managing Fatigue, would establish controls to address cumulative fatigue. Limits to mitigate cumulative fatigue for security personnel were implemented by Order EA–03–038. The proposed rule would codify, with limited changes, these requirements. Changes to those limits that would be imposed by this rule are discussed in detail in Section VI, which also includes a detailed discussion of the proposed limits and other controls to mitigate cumulative fatigue for non-security personnel.

c. The existing regulatory framework does not effectively ensure that fatigue from causes other than work hours is addressed. Work hour controls are necessary, but not sufficient, to effectively manage worker fatigue. As a consequence, training and fatigue assessments are essential. Worker fatigue, and its effects on worker alertness and performance, can result from many causes in addition to work hours (e.g., stress, sleep disorders, daily living obligations) (Rosa, 1995; Presser, 2000). In addition, there are substantial individual differences in the ability of individuals to work for extended periods without performance degradation from fatigue (Gander, 1998; Van Dongen, et al., 2004a; Van Dongen, et al., 2004b; Jansen, et al., 2003). Proposed Subpart I, Managing Fatigue, would require a comprehensive fatigue management program. One example would be the strengthening of FFD training requirements concerning worker fatigue. This would improve behavioral observation and assessment of worker fatigue, self-declaration as a means for early detection of fatigue, worker self-management of fatigue, the ability of workers to obtain adequate rest on a shiftwork schedule, and licensee use of effective fatigue counter-measures.

(6) *Ensuring effective management of worker fatigue through rulemaking would substantially enhance the effectiveness of FFD programs, but additional orders are not presently warranted to ensure adequate protection of public health and safety or the common defense and security.*

Adequate protection of public health and safety and the common defense and security are ensured under the current regulatory framework, including Order EA–03–038 (for security personnel), the NRC's Policy on Worker Fatigue, and licensee technical specification requirements. Licensee FFD programs currently include behavioral observation programs to identify individuals whose behavior indicates they may not be fit to safely and competently perform their duties, and ensure that those individuals are removed from duty until any question regarding their fitness has been resolved. The current work hour controls, in conjunction with licensee behavioral observation programs, automatic reactor protection systems and other administrative controls on worker activities (e.g., post-maintenance testing, peer checks, independent verifications) ensure adequate protection of public health and safety and the common defense and security. However, there are substantial limitations to the current regulatory framework, as detailed in this section. Therefore, although the current regulatory framework provides adequate protection, including work hour controls in 10 CFR Part 26 would provide a substantial increase in public health and safety and the common defense and security. The NRC is proposing to incorporate worker fatigue provisions into Part 26 in light of the substantial increase in safety and security that is expected to result.

(7) *Addressing fatigue of workers in safety-critical positions through regulation is consistent with practices in foreign countries and other industries in the U.S.*

The NRC reviewed the current and proposed Federal limits on work hours for nuclear plant workers in eight other countries, as well as six other industries in the United States and Canada. Although many factors influence specific regulatory limits, and requirements for other industries should be considered in context, the NRC found that the NRC's current guidelines are the least restrictive among those reviewed.

The work hours of nuclear power plant personnel in other countries are largely based on labor laws or union agreements. With the exception of Spain, which has limits consistent with the NRC's Policy on Worker Fatigue, each of the other eight countries has

more stringent requirements. The more stringent requirements have largely preempted the need in those countries for regulation of work hours based on nuclear safety concerns.

The Department of Transportation (DOT) has established regulatory limits on the work hours of pilots, air traffic controllers, and maintenance personnel in the commercial aviation industry (14 CFR Parts 121 and 135), in the maritime industry (46 U.S.C. 8104; 46 CFR Parts 15.705, 15.710 and 15.111), in the rail industry (49 U.S.C. 211; 49 CFR Part 228), and for drivers of heavy trucks in the commercial trucking industry (49 CFR Part 395). The DOT recognized that fatigue can substantively degrade the ability of individuals to perform these duties and, therefore, promulgated regulatory requirements for each of these modes of transportation in keeping with the department's mission to protect public safety. In the late 1980s and early 1990s, the National Transportation Safety Board (NTSB) identified equipment operator fatigue as a significant issue affecting all transportation modes (Beal and Rosekind, 1995). As a result, DOT classified operator fatigue management as a DOT ''Flagship Initiative'' and several proactive fatigue management activities ensued across the transportation industries (e.g. U.S. DOT, 1995; Rogers, 1996, 1997; Hartley, 1998; Carroll, 1999).

In 1999, the NTSB evaluated DOT's decade of efforts on operator fatigue (NTSB, 1999). Dissatisfied that enough was being done, NTSB subsequently offered DOT three recommendations: (1) Expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation safety; (2) develop and disseminate educational materials for transportation industry personnel and management regarding shift work, work rest schedules, and proper regimens of health, diet, and rest; and (3) review and upgrade regulations governing hours of service for all transportation modes to assure they are consistent and incorporate the results of the latest research on fatigue and sleep issues (NTSB, 1999).

On April 28, 2003, the DOT issued revised hours-of-service regulations to require motor carriers to provide drivers with better opportunities to obtain sleep. Among other provisions, the regulations (1) increase the required off-duty time from 8 to 10 consecutive hours; (2) prohibit work after the end of the fourteenth hour after the driver began work; and (3) require long break recovery periods to prevent cumulative fatigue (68 FR 22456–22517; April 28, 2003).

Nuclear power plant licensees in the U.S. have sometimes asserted that the characteristics of the work tasks in nuclear power plants differ from other occupations that have work hour controls (e.g. transportation equipment operators); therefore information from other occupations may not be applicable. In addition, licensees have suggested that the level of automation in nuclear power plants provides an important barrier to human errors resulting from fatigue, and that the amount of control room crew interaction and oversight of operators' actions assures that fatigue-induced errors will be detected and corrected before they have an opportunity to impact plant operations. The NRC concurs that requirements for other industries should be considered in context. Nevertheless, the fact that other federal agencies with a safety mission have established regulations to address fatigue is relevant for several reasons.

First, the human need for sleep and the deleterious effects of sleep deprivation have a physiological basis (*e.g.*, changes in brain glucose metabolism) that is independent of the nature of the work being performed (Wu, *et al.*, 1991). Second, circadian variations in alertness and performance, and the underlying changes in physiological processes, have been observed in individuals performing a wide range of tasks across many industries (Kecklund, *et al.,* 1997). For all individuals, time since awakening, the time of day, and the amount of prior sleep that an individual obtains relative to his or her sleep needs are primary determinants of fatigue and the need for sleep.

The NRC acknowledges that task characteristics and time on task may exacerbate the effects of fatigue on the ability of individuals to remain alert. For example, a concern for task-specific effects is reflected in the DOT hours-of-service regulations for commercial truck drivers, which establish a daily limit on driving time of 11 hours per day. This limit is in addition to the requirements prohibiting driving after 14 hours on duty and mandating minimum 10-hour break periods, which reflect the human physiological need for rest that is necessary to maintain performance (68 FR 22456–22517; April 28, 2003).

By comparison to driving a truck, the characteristics of some jobs in nuclear power plants (*e.g.*, reactor operator) permit greater freedom of movement and social interaction, which may serve to temporarily mitigate the effects of fatigue on alertness. However, there is no evidence to indicate that worker motivation or the stimulating effects of the job or environment alter the underlying physiological processes. Although crew interactions and other job characteristics may serve to bolster worker alertness temporarily, environmental stimulation only masks individuals' physiological need for sleep. Removing the stimulation (*e.g.*, transitioning from the activity of shift turnover to monitoring steady state plant operations during a night shift) will increase the potential for lapses in attention and uncontrolled sleep episodes among individuals who may be partially sleep deprived or otherwise fatigued.

Another consideration regarding the relevance of other regulations limiting work hours is that adverse fatigue effects are observed across a broad range of cognitive functions in addition to alertness. Whereas crew interactions may help sustain alertness, sleep deprivation and sustained periods of wakefulness continue to degrade other cognitive functions (*e.g.*, memory and decision making) and elements of performance that are important to safe nuclear plant operations, such as communications and following written and oral instructions. For example, as discussed in paragraph D(1)(d) of this section, studies of crew performance in critical phases of commercial aircraft flight (*e.g.*, take-off and landings) and in simulated battle command station operations have shown fatigue-related degradations in performance despite the stimulation of the interactions, the intense level of activity, and the implications of degraded performance for the loss of human life. Regulations limiting work hours in other industries that use operating crews (*e.g.*, aviation) and allow greater freedom of movement than trucking (*e.g.* maritime) are consistent with this understanding of the broad effects of fatigue on cognitive performance. There is no reason to believe that nuclear power plant workers' physiological processes and the adverse effects of fatigue on their abilities to perform their job tasks would differ. In addition, the notion that human performance practices in the nuclear industry prevent fatigue-related performance decrements from resulting in human errors is not supported by studies that have shown circadian variations in performance at nuclear power plants (Bobko, *et al.*, 1998; Dorel, 1996; Maloney, 1992).

The NRC acknowledges that the nuclear power industry is perhaps unique, relative to many other industries, in its use of automated safety systems to protect against the

consequences of equipment failure and human error. Nevertheless, reliable human performance remains an essential element in the protection of public health and safety and the common defense and security. Current NRC requirements, such as the minimum on-site staffing requirements of 10 CFR 50.54(m) and minimum security staffing requirements in site security plans, are predicated on the expectation that all personnel in these positions are fit for duty and are able to safely and competently perform their duties. As a consequence, the NRC does not consider the use of automated safety systems to be an appropriate basis for permitting conditions that could allow fatigue to degrade the important line of defense of reliable human performance. Further, despite automated systems, the contribution of human error to risk in operating events continues to be notable (NUREG/CR–6753, ''Review of Findings for Human Error Contribution to Risk in Operating Events'').

Because the NRC concurs that task characteristics are an appropriate consideration, the proposed rule would differ from other Federal agencies' requirements with respect to specific work hour requirements and would require licensees to consider task characteristics when authorizing any waiver from the work hour controls. Nevertheless, the NRC believes that it remains relevant that other Federal agencies with public safety missions have chosen to address worker fatigue through regulation.

In summary, the NRC believes that the proposed requirements in Subpart I will provide a substantial increase in the protection of public health and safety and common defense and security. In determining the provisions of this proposed rule, the NRC has taken into consideration the effects of fatigue on human performance, the specific work practices of the nuclear power industry that both mitigate and contribute to fatigue, the inadequacy of the current regulatory framework, the excessive hours currently worked by many nuclear power plan personnel, and the relevant research and practices of other industries and countries for regulating work hour limits. In addition, many public meetings were held with the nuclear industry and the public to discuss draft provisions for the proposed rule. These interactions are discussed in detail in Section V. The specific basis for each provision of the fatigue management portions of the proposed rule are discussed in Section VI.

The proposed requirements for managing fatigue will provide a substantial increase in the protection of public health and safety and common defense and security by:

(1) Establishing specific, integrated, comprehensive, and enforceable requirements for the effective prevention, detection, and mitigation of worker fatigue;

(2) Ensuring that personnel who perform functions that are significant to the protection of public health and safety or the common defense and security are subject to appropriate work hour controls, including: individuals performing risk significant operations or maintenance duties; health physics, chemistry, and fire brigade duties important to emergency response; and individuals performing security duties important to maintaining the security of the plant;

(3) Establishing work hour controls that provide increased assurance that workers will have adequate opportunity for rest and that deviations from the work hour limits will only be authorized as necessary for plant safety or security and following appropriate assessment of the worker's ability to safely and competently perform his or her duties;

(4) Ensuring that work hour deviations are only permitted when necessary for plant safety or security, and following assessment of the worker's ability to safely and competently perform his or her duties;

(5) Establishing controls to prevent cumulative fatigue that can result from consecutive weeks of extended work hours;

(6) Ensuring workers are provided with sufficient break periods to provide for adequate opportunity for sleep to mitigate acute and cumulative fatigue;

(7) Ensuring that, in addition to work hours, other factors that can affect worker fatigue and the ability of workers to remain alert are adequately addressed through licensee FFD programs;

(8) Encouraging effective fatigue management by permitting licensees to use alternate measures for prevention and mitigation of fatigue; and

(9) Strengthening FFD training requirements concerning worker fatigue. This would improve behavioral observation and assessment of worker fatigue; self-declaration as a means for early detection of fatigue; worker self-management of fatigue; the ability of workers to obtain adequate rest on a shiftwork schedule; and licensee use of effective fatigue counter-measures.

V. Summary of Public Interactions and Comments

In preparing this proposed rule, the NRC has considered comments received by OMB and the NRC on the prior Part 26 final rule affirmed by the Commission in a SRM dated December 4, 2000, and subsequently submitted to the Office of Management and Budget (OMB) for a clearance under the Paperwork Reduction Act. Those comments and responses to them are provided in Section V. A.

The NRC has also considered feedback received from industry, as well as other interested parties and members of the public in preparing this proposed rule. The NRC held 11 stakeholder meetings on the drug and alcohol testing portions of the rule during 2001–2004, and held 13 stakeholder meetings on the fatigue portion of the rule during 2002–2003. Subsequent to the Commission's decision to combine the two rulemaking efforts, the NRC held 1 stakeholder meeting on the combined rule in July, 2004, and 2 subsequent meetings on the fatigue provisions of the combined rule in August and September, 2004.

Throughout the time the meetings were being held, drafts of proposed rule language, regulatory and backfit analysis data, and other pertinent information were made available to the public on the internet ,as announced in the **Federal Register** (67 FR 7093) on February 15, 2002. Feedback was received from stakeholders both through the public meetings and the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Summaries of these meetings, and any comments provided through the Web site are available at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=BQ_PETITION&st=plan* for meetings and comments on the fatigue portions of the rulemaking prior to 2004, and at *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=Part26_risk&st=risk* for meetings and comments on the drug and alcohol testing portions of the rulemaking, and on the fatigue portions of the rulemaking subsequent to the Commission's decision to combine the rulemakings in 2004. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

These interactions with stakeholders were a significant benefit to the NRC in developing the language for the proposed rule in a manner to ensure it was clearly understandable, could be consistently interpreted, and did not result in unintended consequences. Many of the stakeholders' comments directly resulted in proposed changes. Where a comment was included in a proposed provision, the comment is discussed in Section VI.

Many comments were received during the years the meetings were held, and the draft proposed rule language was

changed and re-posted to the web numerous times. Each comment received during these meetings, but not included in the proposed rule text, is not discussed and responded to in detail, given that the NRC is issuing a new proposed rule for formal public comment. However, the most significant comments that were not incorporated are discussed in Section V. B of this document.

A. Public Comments Submitted to OMB on 2000 Final Rule and Responses

The comments below were received by OMB and the NRC on the prior Part 26 final rule affirmed by the Commission in a SRM dated December 4, 2000, and subsequently submitted to OMB for a clearance under the Paperwork Reduction Act. The NRC's responses follow each comment.

Industry Comment 1: Rule should allow combining partial samples to get the required volume for HHS analysis. Otherwise, it [the Regulatory Analysis] should reflect an added expense with a reduced gain.

Response: New provisions in § 26.109, ''Urine specimen quantity,'' prohibit licensees from combining partial samples because this practice may falsely lower the concentration of a drug or adulterant. Further, HHS and DOT do not permit this practice. Additionally, comments on the previous proposed rule objected to combining specimens for the same reason. However, the proposed rule would lower the required specimen quantity from a minimum of 60 milliliters (mL) to 30 mL. NRC discussions with representatives of HHS-certified laboratories have indicated that advances in testing technologies allow accurate and reliable testing of 15 mL specimens. The NRC has proposed 30 mL, which would allow the HHS laboratory sufficient specimen quantity for retesting, if needed. Because the required specimen quantity has been reduced by at least one-half, there should be few instances in which a donor is unable to produce the necessary quantity and, therefore, few instances in which additional costs would be incurred.

Industry Comment 2: Medical professionals other than a licensed physician should be allowed to determine if a history of substance abuse ''raises a concern.''

Response: The proposed rule in § 26.187 would add a position called the ''Substance Abuse Expert'' (SAE), adapted from the related DOT regulations. The SAE need not be a licensed physician, but would be required to have extensive expertise, such as a licensed or certified social worker, psychologist, or others listed in § 26.187(b), and additional qualifications specifically related to substance abuse disorders. The SAE would be authorized to make a determination of fitness in at least circumstances: (1) when an individual has violated the substance abuse provisions of a licensee's or C/V's FFD policy, including, but not limited to a first positive drug test result; (2) when there is a concern that an individual may be impaired by the use of a substance; or (3) for an applicant for authorization when the self-disclosure, the suitable inquiry, or other sources of information identify potentially disqualifying FFD information (PDFFDI) about the applicant.

Industry Comment 3: Reevaluate NRC's regulatory analysis indicating a $27 million savings in light of industry's estimate of a $8 million cost increase.

Response: A detailed reevaluation of the drug and alcohol provisions, based in part on data obtained from NEI, still indicates a savings to industry of $116 million–$183 million (7 percent—3 percent discount rate) present value. The evaluation of the proposed Part 26 provisions as a whole, including the proposed worker fatigue provisions, indicates a cost to industry of $469 million–$730 million (7 percent—3 percent discount rate) present value. A draft regulatory analysis was provided to industry and other stakeholders during the public meetings held in 2004. Comments received have been considered in developing the regulatory analysis for this proposed rule.

Industry Comment 4: New rule requires audits of [HHS] certified labs.

Response: The proposed rule includes additional language in proposed § 26.41 to clarify the NRC's intent that audits of certified labs may be shared among licensees and that licensees are not required to audit areas that are covered by the HHS certification process. Additionally, organizations that do not routinely provide FFD services to a licensee or C/V, such as local hospitals or a substance abuse treatment facility, would be exempt from the annual audit requirement.

Industry Comment 5: Rule includes FFD personnel in program.

Response: The NRC continues to agree with the original intent of the rule, which was that personnel who administer FFD programs must be covered by 10 CFR Part 26. However, during meetings, stakeholders discussed the numerous logistical difficulties associated with covering FFD program personnel. As a result, the proposed rule includes a number of related language adjustments.

Specifically, new language in proposed § 26.25(a)(4) would clarify the NRC's intent that FFD program personnel must be subject to the program. Proposed § 26.25(a)(4)(I) through (v) would be added to identify the FFD program personnel who must be subject to the FFD program, based upon their job responsibilities. Proposed § 26.25(b)(1) would exempt individuals who may provide an FFD service to a licensee or other entity in special circumstances, and who meet all of the following three criteria: (1) They are not employed by the licensee or C/V, (2) they do not routinely provide services to the licensee's or other entity's FFD program, and (3) they do not normally work at a licensee or other entity's facility. Personnel who meet the three criteria specified in proposed § 26.25(b)(1) would be exempt because the limited nature of their involvement with the FFD program makes it unlikely that they would be subject to coercion or influence attempts to subvert the testing process.

In addition, new language in § 26.31(b)(2) would permit FFD program personnel who are distant from a licensee site to be tested at a local facility that meets DOT requirements, including audits. Permitting these FFD program personnel to be tested at local collection sites that follow similar procedures would be adequate to meet the goal of ensuring their continuing honesty and integrity, while addressing some logistical concerns posed by stakeholders.

Industry Comment 6: The term, ''history of substance abuse,'' is pejorative and may incorrectly label some workers in the nuclear industry as substance abusers.

Response: Based upon further discussions with stakeholders, the NRC developed a greater appreciation for the connotations of the term, ''history of substance abuse,'' and agreed that the term has too many pejorative implications. Therefore, the proposed rule would entirely eliminate the use of this term. The rule language no longer discusses this issue in terms of an individual's personal characteristics. Rather, the language focuses on the type of information that would trigger a determination of fitness. This information is referred to as ''potentially disqualifying FFD information'' (PDFFDI), which is consistent with terminology used in access authorization programs.

Industry Comment 7: History of substance abuse creates a new class of workers and no relief.

Response: As noted above, the concept, ''history of substance abuse,''

has been eliminated in the proposed rule. The proposed rule would provide relief to individuals with PDFFDI in three ways. First, individuals would be required to self-disclose PDFFDI that is related to events that occurred only within the past 5 years. This provision provides relief from the current rule, which requires individuals to self-disclose certain adverse events every time they apply for authorization, no matter how long ago the adverse events occurred. Second, licensees would be permitted to accept a determination of fitness conducted by a previous licensee and a favorable termination of authorization for an individual who had any PDFFDI that was addressed and resolved under a previous Part 26 program. This provision also provides relief from the current rule, which requires the licensee to conduct a determination of fitness for any individual who has ever been denied access or had access terminated unfavorably, no matter how long ago the event occurred or whether there is evidence that the individual has been rehabilitated. Licensees would be permitted to conduct another determination of fitness, but would not be required to do so, if the individual's last period of authorization was terminated favorably. Third, licensees would be permitted to accept responsibility for continuing any treatment and followup testing plans that a previous licensee implemented for an individual, rather than conducting a new determination of fitness and developing new treatment and testing plans. These provisions protect the rights of individuals who have successfully resolved or are resolving a substance abuse-related problem as well as reduce the regulatory burden on the individuals and licensees.

Industry Comment 8: History of substance abuse creates a tracking burden.

Response: As noted above, the concept, ''history of substance abuse,'' would be eliminated in the proposed rule. Further, the current rule requires licensees to maintain records and share information related to denials and unfavorable terminations of authorization in § 26.27(a)(3). Therefore, the proposed rule's requirements for licensees to maintain records and share information related to PDFFDI would not create a new tracking burden and are consistent with the access authorization Order.

Industry Comment 9: Change the opiate cutoff level of 300 ng/mL to the HHS standard of 2000 ng/mL.

Response: The proposed rule now includes the 2000 ng/mL HHS cutoff level for opiates. Discussions with HHS indicate that the HHS staff's rationale for changing the cutoff level to 2000 ng/ML provides sufficient protection for public health and safety from individuals who may be abusing opiates.

Industry Comment 10: It is impossible to complete all suitable inquiries within 72 hours.

Response: Consistent with the access authorization Order, which the Commission issued to nuclear power reactor licensees on January 7, 2003, the proposed rule would eliminate provisions for routine temporary access. Therefore, the proposed rule would eliminate the requirement in the Affirmed Rule for a 72-hour turnaround on a suitable inquiry prior to granting temporary access.

Industry Comment 11: Rule requires verification of all employment periods, including less than 30 days.

Response: The proposed rule incorporates feedback received through stakeholder meetings. The revised provisions specify employers required to be addressed during the suitable inquiry for several different cases, including applicants for initial authorization, updated authorization, or reinstated authorization. The employers required to be addressed vary for each of these situations, and are specified in proposed §§ 26.63 and 26.69. In developing this proposed section, the NRC took into account documented substance abuse recidivism rates (highest within the first year following treatment, continuing at a somewhat lower rate for 3 years post-treatment, and decreasing again at 5 years) and stakeholder feedback.

Stakeholders have indicated that employers are generally reluctant to provide any information other than dates of employment, but that more recent employers are more likely to disclose adverse information than employers from previous years. Therefore, the NRC has determined that requiring every employer from the past 5 years to be contacted for all persons is both unnecessary and an unwarranted regulatory burden. Thus, for initial authorization, the employment check is to be conducted with every employer, regardless of the length of employment, for the past year, and with each employer by whom the individual claims to have been employed the longest in each calendar month for the previous 2 years. For authorization updates, the employment check is to be conducted with every employer, regardless of the length of employment, for the past year, and with each employer by whom the individual claims to have been employed the longest in each calendar month for the remaining time since authorization was terminated. For authorization reinstatements, the employment check is to be conducted with each employer by whom the individual claims to have been employed the longest in each calendar month since authorization was terminated. For individuals who have had a substance abuse problem, however, § 26.69 requires a suitable inquiry for the applicable period specified by § 26.63, as well as obtaining any records that other licensees or other entities may have developed relating to any potentially disqualifying FFD information about the individual.

Industry Comment 12: Allow credit for prior licensee's suitable inquiry.

Response: Proposed § 26.63(b) would permit licensees to rely upon suitable inquiry information that was gathered by other licensees and entities. However, for all applicants for authorization, the suitable inquiry would be more thorough than previous industry practices, in order to increase the likelihood that PDFFDI would be identified, if it existed, and to provide reasonable assurance that individuals are trustworthy and reliable as demonstrated by the avoidance of substance abuse. For individuals who have established a recent, favorable work history within the industry, as demonstrated by having held authorization that was terminated favorably within the past 3 three years, the period of time addressed in the suitable inquiry would be reduced from the past 5 five years in every case, to the past 3 three years or less, depending upon how recently the applicant held authorization. If PDFFDI within the past 5 five years is identified regarding an applicant and the information had not been addressed and favorably resolved by a previous licensee or other entity, the suitable inquiry requirements would be more extensive, as described in proposed § 26.69.

Industry Comment 13: Allow credit for prior licensee's medical determination of fitness.

Response: The NRC has clarified the qualification requirements for the medical personnel who may conduct a determination of fitness and believe that these clarifications will provide greater consistency in the determinations made across licensees. Therefore, a requirement for each new licensee to perform another determination of fitness for authorization reinstatements (authorization interrupted for 365 days or less) and authorization updates

(authorization interrupted for >365 days to <3 years) when no new PDFFDI has been identified would be unnecessary.

Industry Comment 14: Requirements for FFD should be consistent with access authorization requirements.

Response: The provisions of the proposed rule are consistent with current access authorization requirements, including those in the recent access authorization Order, which the Commission issued to nuclear power reactor licensees on January 7, 2003.

Industry Comment 15: Medical determination of fitness for all individuals with a history of substance abuse creates an unnecessary burden.

Response: The proposed rule would add § 26.189(b)–(d) to clarify the NRC's intent with regard to the circumstances in which a determination of fitness is required. Permitting licensees to accept the results of a determination of fitness conducted by a previous licensee, when no new PDFFDI has been identified, reduces the unnecessary burden that stakeholders referenced. However, a determination of fitness would continue to be required before an individual is granted authorization to perform activities within the scope of this part when PDFFDI is identified and has not been previously evaluated by another licensee.

Industry Comment 16: Rule does not allow shared audits of HHS-certified laboratories.

Response: The NRC believes that a requirement for independent audits by all licensees who rely on a laboratory is a redundant and unnecessary requirement. The proposed rule would specify requirements for sharing audits in proposed § 26.41(g). This paragraph would state that licensees may jointly conduct audits, or accept audits of C/Vs and HHS-certified laboratories that were conducted by other licensees or entities subject to this part, when the services provided to the sharing licensees or entities by the C/Vs and HHS-certified laboratories are the same. Nonetheless, each sharing licensee is responsible for ensuring the correction of any deficiencies identified in audit results.

B. Key Stakeholder Comments Not Incorporated Into Proposed Rule and Responses

The headings below provide a listing of the significant comments received, but not incorporated, for each subpart in the proposed rule. The comments were received from stakeholders during development of this proposed rule. Following each comment is a response detailing why the comment was not incorporated into the proposed rule.

Subpart A Administrative Provisions

There are no significant comments that were not incorporated into the proposed rule text.

Subpart B Program Elements

Comment 1 (NEI): The Medical Review Officer should not be included in the random testing program.

Response: Although current Section 2.3 [Preventing subversion of testing] in Appendix A to Part 26 requires licensees to carefully select and monitor individuals who are responsible for administering the drug and alcohol testing program based upon the highest standards of honesty and integrity, some licensees' testing programs did not include all of the FFD program personnel (including MROs) who the NRC originally intended to be subject to testing. The proposed change would be made to clarify the NRC's original intent because the actions of these individuals have an ongoing effect on public health and safety as a result of their responsibility to ensure that the FFD program is effective. In addition, these persons' actions affect the confidence that the public, management, and individuals who are subject to testing have in the integrity of the program and the accuracy and reliability of test results. Individuals who are involved in the day-to-day operations of an FFD program are in a position to permit substance abusers to remain undetected. For example, MROs could inadvertently commit errors when reviewing test results as a result of being impaired from drug or alcohol abuse or because of motives associated with maintaining an MRO's substance abuse or empathy with an abuser. Furthermore, several reported incidents have confirmed the need to assure that FFD program personnel meet the highest standards of honesty, integrity, reliability, and trustworthiness. For example, one licensee added specimen collectors to the testing pool after investigating an allegation and determining that two collectors were substance abusers. In another instance, a contracted MRO who was not in the testing pool was reported to be an alcoholic and an abuser of prescription drugs. Some MROs who provided their services to other Federally regulated industries were identified as substance abusers. Therefore, the proposed rule provision would fulfill the NRC's original objective and require licensees and other entities to extend their programs to include FFD personnel who (1) can link test results with the individual who was tested before an FFD policy violation determination is made, including, but not limited to the MRO; (2) make determinations of fitness; (3) make authorization decisions; (4) are involved in selecting or notifying individuals for testing; or (5) are involved in the collection or on-site testing of specimens.

Comment 2 (NEI): The FFD training requirements are too detailed, particularly the requirement for the FFD exam to be a separate exam, and for each knowledge and ability (KA) to be covered on each test.

Response: The proposed rule would require that individuals who are subject to the FFD program demonstrate attainment of the specified KAs by passing a comprehensive examination. This new requirement would be added because there have been several instances since Part 26 was first promulgated in which individuals were able to overturn determinations that they had violated a licensee's FFD policy on the basis that they had not understood the information they received during FFD training and so could not be expected to comply with the requirements of the policy. Therefore, the proposed rule would require individuals to demonstrate their attainment of the knowledge and abilities to ensure that the FFD training has been effective. There would also be a requirement for the examination to include a comprehensive random sampling of all KAs with questions to test each KA, including at least one question for each KA, and establish a minimum passing score of 80 percent. These requirements would be modeled on other required training programs that have been successful in ensuring that examinations are valid and individuals have achieved an adequate understanding of the subject matter.

Comment 3 (Quest Diagnostics): Unannounced audits of HHS laboratories by the licensee, other entity, or NRC inspectors at any time is unreasonable given the other inspections, client tours, scheduled department meetings, and off-site requirements for testimony that are required of laboratories and their staff. The audits should also not be more than 48 hours in duration, and original documents or copies should not be allowed to be removed from the laboratory.

Response: The proposed rule would permit audits to be unannounced to enhance the effectiveness of the audit process should unannounced audits appear to be necessary. For example, a licensee or other entity may receive allegations that a laboratory is falsifying records or that laboratory employees are using drugs, and the licensee or other

entity may determine that an unannounced audit would provide the most effective means to investigate such allegations. The proposed rule would ensure that the licensee's or other entity's contract with the lab would permit the unannounced audit as well as access to any information necessary to conduct the audit.

The NRC has also not proposed limits on the duration of such audits, as time limits may decrease the effectiveness and integrity of the audit process. Licensees or other entities may determine they require more lengthy audits to effectively cover all intended areas, or to assess deficiencies.

The NRC has incorporated a provision to permit an HHS-certified laboratory to reasonably limit the use and dissemination of any documents copied or taken away by the licensee's or other entity's auditors in order to ensure the protection of proprietary information and donors' privacy. However, the NRC does not believe auditors should be restricted from copying or taking away documents that do not meet the above criteria, because doing so would decrease the efficiency and effectiveness of audits.

Subpart C Granting and Maintaining Authorization

Comment 1 (NEI): The process for granting authorization for individuals whose prior authorization was terminated unfavorably should be an initial.

Response: The proposed rule would require licensees to follow the proposed provisions in § 26.69 for individuals whose prior authorization was terminated unfavorably due to an FFD concern. Licensees would not be permitted to use the proposed process for granting initial authorization for those individuals for several reasons. First, if an individual was terminated for a first positive drug or alcohol test result, and if it has been any period less than 3 years since that individual was terminated, then it would be unnecessary to require licensees and other entities to perform a suitable inquiry of the entire past 3 years (which would be required for an initial authorization). In those cases, proposed § 26.69 would require licensees or other entities to perform a suitable inquiry for the period since the individual's authorization was terminated. Second, if an individual has had his or her authorization denied for 5 years, the suitable inquiry should be performed for the entire past 5 years (as required in proposed § 26.69). The proposed process for granting initial authorization would only require a suitable inquiry for the past 3 years, and the NRC believes that would not be appropriate in these situations. If an individual's prior authorization was terminated unfavorably for reasons that are unrelated to an FFD concern, the licensee would implement the relevant requirements in the access authorization Orders, which the Commission issued to nuclear power reactor licensees on January 7, 2003.

Comment 2 (NEI): There should not be any additional drug and alcohol testing for applicants for reinstatement of authorization whose last period of authorization ended between 6 and 30 days ago.

Response: The proposed rule would require licensees and other entities to subject applicants whose authorization has been interrupted for 6–30 days to the possibility of being selected for pre-access testing at a probability of approximately 4 percent. This probability approximates the likelihood that individuals who are subject to random testing at the 50 percent annual testing rate would be selected for testing at some point within a 30-day period. For applicants selected for such testing, the licensee or other entity would complete an alcohol test and collect a specimen for drug testing before reinstating the individual's authorization. The provision would enhance the deterrent effect of pre-access testing for individuals who have had a very short break in authorization, without imposing the regulatory burden of requiring that every individual be tested.

This is one of many changes to Subpart C that are being proposed to emphasize the NRC's intent that FFD programs provide reasonable assurance that persons who are subject to this part are trustworthy and reliable as demonstrated by the avoidance of substance abuse and the adverse behaviors that accompany it. To reduce the risk of an insider threat, maintain public health and safety, and provide for the common defense and security in the post-September 11, 2001, threat environment; the NRC has placed an increased emphasis on the trustworthiness and reliability of individuals who have access to certain types of sensitive information, certain types of radiological materials, and protected areas in nuclear power plants—the same individuals who would be subject to the proposed rule. Because these individuals have unimpeded access to sensitive information and safety equipment and systems, their trustworthiness and reliability are essential. The NRC concludes that an increased level of requirements are necessary for the new threat environment, such that there remains reasonable assurance that individuals who are subject to the rule are trustworthy and reliable. Pre-access testing is one important aspect of FFD programs designed to deter and detect substance abuse, which presents an unacceptable risk to public health and safety and the common defense and security in several ways.

First, substance abuse increases the likelihood that such individuals may pose an insider threat by increasing an individual's vulnerability to coercion. Under 10 CFR 73.1, a passive insider is defined as an individual who obtains or attempts to obtain safeguards or other relevant information, such as a nuclear power plant's physical configuration and design, and who does not have a functional or operational need to know such information. Section 73.1 defines an active insider as a knowledgeable individual who, while within the protected area of a nuclear power plant in an unescorted status, takes direct action to facilitate entrance and exit, disable alarms and communications, and/or participates in a violent attack. An individual who uses illegal drugs may be coerced into cooperating, actively or passively, with a terrorist in an attempt to commit radiological sabotage if, for example, the terrorist were to threaten the individual with revealing his or her illegal drug use or was somehow able to withhold drugs from an individual who is addicted.

Second, an individual's judgement and self-control are impaired while an individual is abusing drugs or alcohol. When an individual is intoxicated from abusing any of the substances for which testing is conducted under Part 26, including alcohol, the individual is more likely to inadvertently reveal sensitive information that terrorists could use in a radiological sabotage attempt than when he or she is not intoxicated.

Third, the use of illegal drugs establishes that an individual is willing to disobey the law, thus indicating that the individual will disregard other rules and regulations. The use of illegal drugs raises questions about the individual's trustworthiness and reliability in terms of scrupulously following the regulations, procedures, and other requirements, such as safeguards requirements, that ensure the protection of public health and safety.

Many provisions of the current rule provide means to identify and reduce the risks posed by any individuals whose substance abuse casts doubt on their trustworthiness and reliability. In combination with other measures the

NRC has taken since September 11, 2001, the proposed requirement that individuals who have had a break in authorization of between 6–30 days must be subject to one-time selection for pre-access testing would provide further assurance that those individuals are trustworthy and reliable. The NRC believes that implementation of this provision and other provisions in the proposed rule, in addition to the other, related measures the Agency has taken in the post-September 11, 2001, threat environment, would provide reasonable assurance that individuals who are subject to the rule are trustworthy and reliable.

Subpart D Management Actions and Sanctions To Be Imposed

There are no significant comments that were not incorporated into the proposed rule text.

Subpart E Collecting Specimens for Testing

There are no significant comments that were not incorporated into the proposed rule text.

Subpart F Licensee Testing Facilities

Comment 1 (NEI): Significant QA requirements have been added, which makes licensee testing facilities perform at the same level as an HHS-certified laboratory. This will result in licensees closing many of their licensee testing facilities.

Response: New requirements would be added for conducting initial urine specimen validity tests at licensee testing facilities. Specimen validity testing refers to testing conducted to identify attempts to tamper with a specimen. This includes adulteration, which means putting a substance into a specimen that is designed to mask or destroy the drug or drug metabolite that the specimen may contain or to adversely affect the assay reagent; substitution, which includes replacing a valid urine specimen with a drug-free specimen; and dilution, which includes intentionally diluting a urine specimen with another liquid to decrease the concentration of a drug below the cutoff concentration. When HHS published its Notice of Proposed Revisions (66 FR 43876; August 21, 2001) to the HHS Guidelines to establish requirements for specimen validity testing performed by HHS-certified laboratories, the HHS reported that the number of adulterated and substituted urine specimens has been increasing among the specimens tested under the Federal agency workplace drug testing program and the U.S. Department of Transportation (DOT) regulations (49 CFR part 40). Program experience gained since Part 26 was first promulgated has also indicated an increasing number of adulterated and substituted urine specimens. Although current Part 26 contains a number of requirements related to specimen validity, the methods available to tamper with specimens have become more sophisticated since the rule was first published and therefore more sophisticated methods of detecting tampering are necessary. The proposed rule would incorporate new requirements for conducting specimen validity tests that are consistent with similar provisions contained in the most recent revision to the HHS Guidelines (69 FR 19643; April 13, 2004). These new requirements for specimen validity testing would be added to strengthen FFD programs by improving the ability to detect specimens that are adulterated, substituted, or diluted.

The requirements for specimen validity testing are proposed to identify individuals who are willing to attempt to subvert the testing process, and so may be willing to subvert other rules and regulations that are important for public health and safety and the common defense and security. Detecting specimen tampering is necessary to identify individuals who may attempt to hide drug abuse, because attempts to tamper with a specimen provide clear evidence that the individual is not trustworthy and reliable.

The proposed rule would permit licensees to conduct drug and validity screening tests, and to grant authorization to individuals whose specimens yield negative test results. If the NRC were not to include quality assurance and training requirements in conjunction with such tests, but still permit licensees to grant authorization on the basis of the tests, then the NRC would not have reasonable assurance that only individuals who are trustworthy and reliable are granted authorization. Therefore, the NRC has included such provisions in this proposed rule.

Comment 2 (NEI): Licensees should be permitted 3 business days to send Bottle B of a split specimen to the HHS lab for testing, following a request from the donor.

Response: The proposed rule would extend the time period provided to the licensee to send Bottle B to the HHS-certified laboratory. The current rule requires that the specimen must be sent the same day as the donor request. The proposed rule would allow 1 business day to send the specimen. The proposed rule would not allow 3 days, as requested by NEI, because the proposed rule would also require licensees to administratively withdraw the individual's authorization at the time Bottle A is confirmed non-negative. The NRC believes that permitting up to 3 days would pose an unnecessary burden on the individual, especially because some licensees temporarily remove pay until the Bottle B test is complete. The NRC also believes that 1 business day would provide sufficient time for the licensee to locate Bottle B, prepare it for shipping, and deliver it to the courier.

Subpart G Laboratories Certified by the Department of Health and Human Services

Comment 1 (Quest Diagnostics): If an individual who is the subject of a drug test requests in writing to have access to the laboratory's records related to his or her drug test, the records released should be limited to the laboratory test report and data package, and not include the results of any relevant certification, review, or revocation-of-certification proceedings. Blanket releases by the employee to third parties should be prohibited.

Response: The proposed rule would permit an individual to have access to laboratory records, as well as a third party such as an attorney to whom the employee has released the information. The records that an employee may request include laboratory records beyond the individual's drug test results because other records may be relevant to litigation. For instance, if a laboratory audit subsequent to the individual's test uncovers improper testing that may be relevant to the individual's test, that information may be useful in litigation. The NRC sees no justification for withholding such information from an individual or an authorized third party, and believes access to such information to be consistent with protection of the individual's rights and with due process. The provision is also consistent with HHS guidelines and Section 503 of Public Law 100–71 for Federal workplace drug testing.

Comment 2 (Quest Diagnostics): Cutoff levels should be consistent with new HHS proposed Guidelines.

Response: The NRC typically considers HHS provisions for inclusion into a Part 26 proposed rule following the issuance of final HHS Guidelines. This is to minimize the possibility that a Part 26 proposed rule must be re-proposed due to changes in the HHS Guidelines between their proposed and final forms, and to ensure proper stakeholder interaction in the technical basis development stage, followed by public review and comment of the Part 26 proposed provisions. The NRC will consider the proposed HHS Guidelines

for inclusion into the technical basis development for a future Part 26 rulemaking once they have been finalized by HHS.

Subpart H Determining Fitness-for-Duty Policy Violations and Determining Fitness

Comment 1 (NEI): The MRO has too much independent responsibility, given that the licensee is responsible for the program. The MRO is part of the licensee program and should be accountable within the program, not independent of the program.

Response: The proposed rule would require that MRO and MRO staff duties must be independent from any other activity or interest of the licensee or other entity. Although the NRC is unaware of any instances in which the MRO function has been compromised in Part 26 programs, the experience of other Federal agencies has indicated that clear limits on independence and who may direct MRO staff activities are advisable. Further, in contrast to other Federal agencies' regulations, current Part 26 permits employees of licensees and other entities to perform MRO staff activities for MROs who work off site and are not physically present to supervise the staff, which may provide greater opportunities for inadvertent compromise of the independence of the MRO function than situations in which the MRO and his or her staff are physically co-located. Independence of the MRO function from the licensee or other entity is necessary to ensure that MROs are impartial gatekeepers for the accuracy and integrity of the drug testing process and also to ensure the confidentiality of medical information.

Comment 2 (NEI): The SAE requirements for qualification are excessive.

Response: Detailed requirements regarding the qualifications and responsibilities of the SAE are necessary to ensure consistency among FFD programs. This is because under the proposed rule, FFD programs would be permitted to accept determinations of fitness and treatment plans from other Part 26 programs, if an individual who has had a substance abuse problem will be granted authorization by another licensee or entity. In addition, detailed requirements regarding the qualifications and responsibilities of the SAE are necessary because of the key role the SAE would play in assuring the public health and safety and common defense and security when making a determination of fitness. The SAE role is not defined in the current rule. Therefore, many of the provisions in the proposed subpart would be adapted from related DOT requirements regarding the ''substance abuse professional'' [49 CFR Part 40, Subpart O; 65 FR 41944; August 9, 2001]. Additionally, the NRC has received feedback on implementation of the current rule that some MROs do not feel qualified to make decisions on substance abuse treatment and rehabilitation. Under the proposed rule, the critical tasks of assessing the presence of a substance abuse disorder, providing input to authorization decisions, and developing treatment plans would be reserved for professionals who have met the specific training, clinical experience, and knowledge requirements for an SAE.

Subpart I Managing Fatigue

Subpart I would establish clear and enforceable requirements concerning the management of fatigue at nuclear power plants. Many stakeholders took an interest in, and commented on Subpart I through the public meetings, including IBEW, UCS, the Nuclear Energy Institute (NEI), the Professional Reactor Operator Society (PROS), industry representatives, and Barry Quigley, the petitioner, among others. Because of the level of interest and commenting on Subpart I, in comparison to the other subparts, several key comments that were not incorporated, and their responses, are provided below for each of the stakeholders listed above.

Comment 1 (IBEW): Individuals allowed to perform fatigue assessments should be trained to a higher level than others.

Response: The NRC is proposing to train individuals and supervisors to the same level because fatigue management is a shared responsibility. The proposed level of training would provide the knowledge needed to perform a fatigue assessment, including providing an understanding of the indications and effects of fatigue, and the appropriate use of fatigue countermeasures. This ensures that those individuals who may undergo a fatigue assessment have been trained to understand the process to which they will be subject and what the assessor will be looking for, in addition to being able to recognize the signs of fatigue in their coworkers. Because the training on what to expect from a fatigue assessment is not substantially different from how to conduct one, for simplicity of implementation, all workers would be trained to the same level. In addition, the proposed revisions to drug and alcohol testing provisions would revise that training such that all workers are required to be trained to the same level. The fatigue training would therefore be consistent with those provisions as well.

Comment 2 (Patrick Shaffer, Southern California Edison): The 48 hour/week group average limit is not high enough for groups other than security force personnel that would be subject to the proposed work hour controls. A 60 hour/week group average limit would be preferable.

Response: Answered in the response to Comment 4, below.

Comment 3 (Barry Quigley, petitioner): The group average limit should not be increased above a 48 hour/week limit.

Response: Answered in the response to Comment 4, below.

Comment 4 (UCS): The proposed rule would permit the entire affected workforce to work 53-hour weeks [including shift turnover time], which erodes fatigue protection from the 40-hour weeks recommended in NRC's Policy on Worker Fatigue.

Response: The objectives of the 48-hour group limit during normal plant operations are to ensure that the amount of overtime typically worked by individuals does not adversely affect their abilities to safely and competently perform their duties, to define an enforceable upper limit to the nominal 40-hour work-week policy in GL 82–12, and to permit licensees to manage overtime in a manner that reflects the differing desires and capabilities of individuals with respect to work hours. A more detailed discussion of the basis for requiring a 48 hour/week group average limit is provided in Section VI with respect to proposed § 26.199(f), and is also summarized below.

A 40-hour work-week during normal operations is a key objective of the NRC's Policy on Worker Fatigue. The policy is intended to ensure that there are enough operating personnel to ''maintain adequate shift coverage without routine heavy use of overtime.'' However, the policy, and the 40-hour work-week objective, are not enforceable.

Routine overtime can cause cumulative fatigue, which degrades the abilities of workers to safely and competently perform their duties. The proposed collective work hour controls, including the 48-hour per week group limit during normal plant operations, would address cumulative fatigue by establishing more readily enforceable requirements for the long-term control of work hours, including the limited use of overtime for occasional short-term exigent circumstances (*e.g.*, equipment failure, personnel illness or attrition). The 48-hour group limit would reduce the potential for cumulative fatigue by

preventing excessive use of the maximum allowable individual limits during normal plant operations. The current regulatory framework does not contain enforceable requirements to prevent such practices. In addition, by limiting work hours during normal conditions, individuals would be better rested and less susceptible to cumulative fatigue from the long work hours that are common during plant and security system outages. Further, it would provide reasonable assurance that individuals will be better rested prior to an emergency or increased threat condition.

The proposed requirement would limit groups of individuals to a 48-hour average, permitting 20 percent overtime in excess of the nominal 40-hour work week. Consideration of several types and sources of information led to the decision to establish a group average limit of 48 hours for normal plant conditions. These included past recommendations from experts and expert panels on work scheduling and maintaining worker alertness in the nuclear industry, surveys of nuclear power plant workers on their desire and ability to work overtime, data and industry practices on the amount of overtime worked by security personnel, and requirements and practices in other industries. A detailed description of the sources of information is included in Section VI with respect to proposed § 26.199(f).

Comment 5 (NEI): A 56-day outage exclusion from the 48-hour group average work hour limits is insufficient.

Response: Answered in the response to Comment 7, below.

Comment 6 (UCS): The work hour limits should not be turned off based on an unrelated artificial construct, such as outage duration(s) and national security levels. Instead, the rule should state the work hour limits for short and long terms.

Response: Answered in the response to Comment 7, below.

Comment 7 (Barry Quigley, petitioner): Outages should not be excluded from the group work hour average limits.

Response: The collective work hour controls address the long-term control of work hours, including the limited use of overtime for occasional short-term exigent circumstances (*e.g.*, equipment failure, personnel illness or attrition). However, the NRC recognizes the need to address separately the control of work hours during outages because of the unique staffing and workload demands of this plant state. Accordingly, the proposed rule would permit a limited exclusion period for plant outages from the collective work hour controls.

The NRC considered several factors, including current policy, the bases for the policy, and lessons learned from the policy implementation in developing a provision to permit a limited exclusion period for plant outages from the collective work hour controls. The NRC's Policy on Worker Fatigue provides guidelines for controlling work hours, ''on a temporary basis,'' during periods requiring substantial overtime. The policy reflects the NRC's recognition that outages are unique, relatively short-term, plant circumstances involving levels of activity that are substantially higher than most non-outage operating periods. The policy also reflects the NRC's understanding that although individuals are capable of working with limited rest without degradation of performance for short periods of time, research has shown that the ability to sustain performance without adequate rest is clearly limited. However, the NRC has never defined the term ''temporary basis'' as used in the policy. As a consequence, licensees have used the guidelines to control working hours for conditions ranging from a few days to more than a year. Industry experience with conditions such as sustained plant shutdowns and the increased work hours of security personnel following the terrorist attacks of September 11, 2001, have indicated the need to establish clear and more readily enforceable requirements that would limit the sustained use of extended work hours.

The NRC considered several factors in setting the exclusion period for plant outages at 8 weeks. First, by the end of 8 weeks of work at the limits permitted, individuals will have worked 540 hours, including 200 hours of overtime. This is 50 percent of the hours that surveys of nuclear plant workers have indicated are acceptable on an annual basis. Second, by the end of 8 weeks of work at the limits permitted, individuals will have missed as many as 17 normally scheduled days off, a reduction of 60 percent in the time available to recover and prevent cumulative fatigue. In addition, with each passing week of an outage, individuals have worked an increasing number of normally scheduled days off. The ability to defer daily living obligations becomes increasingly difficult, causing increased pressure to reduce sleep time in order to meet demands of both work and daily life, and increased potential for cumulative fatigue.

In addition to considering the potential for cumulative fatigue, the NRC considered current industry data concerning the duration of plant outages. The average refueling outage duration, as indicated by outage data from 2000–2002 in the Information System on Occupational Exposure database (ADAMS Accession No. ML050190016), is approximately 39 days. Eighty-nine percent were less than 8 weeks in duration. In reviewing the frequency of outages, by duration, the NRC found that it would be necessary to increase the exclusion period substantially to include a marginal number of additional outages. The NRC believes that such an increase in the exclusion period would substantively increase the potential for cumulative fatigue and fatigue-related personnel errors. By contrast, decreasing the exclusion period to less than 8 weeks would rapidly increase the number of outages that would, in part, be subject to the collective work hour controls, potentially increasing the duration and cost of those outages. The NRC acknowledges that decreasing the exclusion period by 1 or 2 weeks could decrease the potential for cumulative fatigue, but the magnitude of the decrease would be difficult to quantify and the benefit would not likely justify the costs.

The NRC believes that an exclusion of the first 8 weeks of an outage is consistent with the objective of ensuring that licensees provide adequate shift coverage without routine heavy use of overtime. The exclusion period would be limited to plant outages, which occur regularly, but with limited frequency. In addition, the duration of the exclusion period would be limited to 8 weeks, thereby providing reasonable assurance that workers would be able to safely and competently perform their duties, and not be impaired from cumulative fatigue.

The NRC further considers that the exclusion of security system outages and increased threat conditions is appropriate. In these conditions, maintaining plant security is of the utmost importance. It is specifically during these conditions that the NRC believes that the benefits to the common defense and security of augmenting on-shift security staffing during those conditions outweigh the potential risk from increased fatigue for those time periods.

Comment 8 (PROS and UCS): Turnover time is excluded from the work hour limit calculations, but there is no maximum allowed turnover time. This could lead to excessive time allocated to turnovers, and therefore hours worked.

Response: Although the NRC believes it is necessary and justified to limit the number of hours worked by certain individuals to ensure public health and safety and the common defense and security, the NRC also believes shift turnovers contribute significantly to safety and security. If the proposed rule included shift turnover in the work hour calculations, licensees may have an incentive to limit turnover time, which could have a negative impact on safety and security. The NRC believes the importance of an accurate and thorough turnover should not be undermined through the imposition of work hour restrictions related to turnover.

The NRC shares the commenters' concern that excessive time allocated to turnovers could result in excessive hours worked. Therefore, proposed § 26.199(b)(1)(I) would specify the types of activities that would and would not be considered shift turnover activities under the proposed rule. For example, the proposed paragraph would define shift turnover activities as only those activities that are necessary to safely transfer information and responsibilities between two or more individuals between shifts. By contrast, the early arrival of an individual for meetings, training, or pre-shift briefings for special evolutions would not be considered shift turnover time. The NRC believes that the proposed specifications for shift turnover activities would be sufficient to ensure that excluding shift turnover time from work hours calculations, combination with the other requirements for fatigue management in the proposed rule, would be sufficient to prevent individuals from working excessive hours.

Comment 9 (UCS): The formal determination that a waiver of the individual work hour limits and break requirements ''is necessary to mitigate or prevent a condition adverse to safety,'' or to ''maintain the security of the facility,'' is hardly a robust barrier when one considers all the safety-challenged things that have been changed at nuclear power plants under the far more restrictive provisions of 10 CFR 50.59.

Response: The provisions of 10 CFR 50.59 do permit many minor changes to be made at nuclear reactors because the safety criteria are stated in the negative. In other words, a licensee is permitted to make changes that do not have an adverse impact. In contrast, the proposed waiver criteria would work in the positive. Minor safety issues would not constitute a valid justification for a waiver of the individual limits or break requirements because the criteria are stated in the positive. Only work that ''is necessary to mitigate or prevent a condition adverse to safety,'' or to ''maintain the security of the facility,'' would meet the criteria. This is consistent with the NRC's intent that waivers be approved only in very limited circumstances. The NRC believes granting of waivers in these extreme cases is justified and in the public interest because the gain in safety or security from the work being completed in an unimpeded manner would offset the potential reduction in safety or security from worker fatigue.

Comment 10 (NEI): Waivers should be allowed for pressing economic concerns.

Response: The criteria for granting waivers from individual short-term work hour limits and break requirements were strengthened from current plant technical specification requirements to permit the granting of waivers only for conditions adverse to safety or security. Industry data have shown significant over-use of waivers, mostly for commercial reasons, as is detailed in the Regulatory and Backfit Analysis prepared for this proposed rule. The NRC believes the individual short-term work hour limits and break requirements should only be waived in unique circumstances, on a very infrequent basis, and only when necessary for safety or security. Permitting waivers for economic reasons would increase the potential risk to public health and safety and the common defense and security from worker fatigue without an off-setting gain to safety or security. As described in this section with respect to the individual limits in proposed § 26.199(d)(2) and (3), the potential for worker fatigue in conditions that would require a waiver is substantial (Baker, *et al.*, 1994; Dawson and Reid, 1997; Stephens, 1995; Strohl, 1999). As a consequence, the NRC does not believe that licensees can reasonably justify the performance of risk significant functions at work hours in excess of the proposed limits on the basis that the action would not constitute an adverse impact on safety or security. During the public meetings described in Section V, industry stakeholders proposed that a senior site manager have the authority to grant waivers if the manager ''determines that the deviation will not have an adverse impact on safety or security.'' The NRC does not believe that the criterion proposed by industry stakeholders is appropriate for several reasons. The work hour limits of proposed § 26.199(d) would apply only to personnel performing risk significant functions. If an activity is not risk significant, it is not subject to the work hour controls and therefore a waiver is unnecessary. The proposed waiver criteria, therefore, do not impose unnecessary restrictions in such circumstances. Further, the NRC does not believe the proposed work hour limits and minimum break requirements are unnecessarily conservative. The criterion proposed by industry representatives is also highly subjective. In light of concerns regarding industry's past use of deviations that the NRC documented in SECY–01–0113, the use of a subjective criterion would not be an effective regulatory approach to mitigating the past over-use of waivers by certain licensees.

Comment 11 (NEI): There should not be a reporting requirement for the number of waivers granted.

Response: As detailed in the Regulatory and Backfit Analysis, the industry has, and continues to, grant excessive numbers of waivers each year. Although the proposed provisions are expected to greatly limit the number of waivers licensees can grant each year, the NRC believes it is necessary and justified to monitor the number of waivers granted, along with other indicators of FFD program performance that are proposed to be monitored, to ensure the rule is implemented as intended and that the fatigue portions of FFD programs are effective. The NRC has weighed the burden introduced in the proposed reporting requirement with the burden that would otherwise be required of NRC staff and inspectors to perform such monitoring and has determined the burden is justified. In that determination, the NRC has also considered that a yearly FFD program performance report is currently required for the drug and alcohol testing program, and the additional reporting for the fatigue programs would merely add to the report, not create a new one.

Comment 12 (NEI): The fire brigade should not be subject to Subpart I requirements.

Response: The proposed work hour limits would be applicable only to those members of the fire brigade who are responsible for understanding the effects of fire and fire suppressants on safe shutdown capability for the reactor. This knowledge enables them to provide the control room operators and fire brigade leader with information that is critical to implementing a fire mitigation strategy that maintains safe shutdown capability. For application of the collective work hour controls specified in § 26.199(f), these fire brigade members could be averaged with another work group (*e.g.*, operations) for those individuals who perform the duties of both groups.

Attachment 1 to SECY–99–140, Recommendation for Reactor Fire Protection Inspections, dated May 20, 1999, states that ''based on IPEEE results, fire events are important contributors to the reported core damage frequency (CDF) for a majority of plants. The reported CDF contribution from fire events can, in some cases, approach (or even exceed) that from internal events.'' Fire brigade members must retain the cognitive ability to be able to think and determine the best way to suppress a fire to prevent additional damage to safety-related equipment, evaluate equipment affected by a fire to report to control room operators concerning equipment availability, make decisions concerning smoke ventilation to prevent the fire effects from affecting other plant operations, and coordinate all activities with control room operators.

Fatigue can substantially degrade a worker's decision-making and communication abilities, cause a worker to take more risks, and cause a worker to maintain faulty diagnoses throughout an event, as detailed in Section IV. D. These abilities are key to the duties of the fire brigade members who are responsible for understanding the effects of fire and fire suppressants on safe shutdown capability for the reactor. Degradations of these abilities could have significant consequences on the outcome of an event involving a fire. For instance, a fatigued worker could incorrectly decide to vent smoke or toxic gas to an area required for alternate shutdown, which could prevent or impair access to equipment needed for safe shutdown of the plant. In addition, a fatigued worker could incorrectly apply the wrong fire suppressant, which could affect additional equipment in the plant. Further, impaired decision-making could lead a worker to improperly control flooding, which could impact other needed equipment, or could incorrectly determine whether an area contains critical equipment and improperly apply a suppressant in that area. Impaired communications could also lead to incomplete disclosure of information to licensed operators in the control room, which could adversely impact the decision-making of those operators. If information known to the impaired worker is not properly communicated, operators may not initiate appropriate actions to mitigate the fire effects, or effects of suppressant activities, on critical equipment. As a consequence, ensuring that the ability of fire brigade members to safely and competently assess the effects of a fire and fire suppressants on safe shutdown capability is essential to the overall success of the fire mitigation strategy and the protection of public health and safety.

Further, the NRC periodically grants exemptions from requirements in 10 CFR Part 50, Appendix R [Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979] based on protection of the levels of defense in depth listed in Section II(A) of Appendix R to Part 50, which are ''To prevent fires from starting; To detect rapidly, control, and extinguish promptly those fires that do occur; To provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.'' Granting these exemptions is often predicated on effective manual suppression of a fire by the fire brigade.

Comment 13 (NEI): There should not be requirements for a 48-hour break every 14 days and a 24-hour break every 7 days.

Response: The NRC believes the proposed 24- and 48-hour break requirements are necessary to reduce the effects of acute and cumulative fatigue. A more detailed discussion of the basis for requiring the 24- and 48-hour breaks is provided in Section VI with respect to proposed § 26.199(d)(2), and is also summarized below.

Acute fatigue results from excessive cognitive work and especially from significant amounts of missed sleep. It is readily relieved by obtaining adequate rest and sleep. Cumulative fatigue results from individuals receiving inadequate sleep for successive days. As fatigue increases, performance is increasingly impaired, shows greater variability, and manifests itself in the form of errors of omission and commission. Research has shown that lack of adequate days off and extended workdays can result in cumulative sleep debt and performance impairment. This research, as well as other considerations, is discussed in detail in Section VI with respect to proposed § 26.199(d)(2).

Additionally, the NRC considers the 24- and 48-hour breaks to be a key component of fatigue mitigation for the transient workforce. Contract and other temporary personnel move from one plant outage to another within a region or nationally. During most portions of an outage, these personnel would be subject only to the proposed individual limits and break requirements. The break requirements, in conjunction with the consideration that such temporary workers likely have periodic seasonal breaks between outages, provides reasonable assurance that they will not be impaired from either acute or cumulative fatigue.

Comment 14 (PROS): Utilities should not be allowed to work licensed operators up to 16 hours straight, they should be limited to 12 hours.

Response: Although proposed Subpart I would not prohibit the use of 16-hour shifts, the proposed rule includes requirements that collectively address this concern. The proposed rule would include controls that would reduce the frequency of 16-hour shifts. These controls include proposed § 26.199(d)(1)(ii), which would limit the maximum hours worked in any 48-hour period to no more than 26 hours. This limit prohibits individuals from working 16-hour shifts on two consecutive days. Proposed § 26.199(d)(2)(I) would require a minimum 10-hour break between work periods and provide workers with the opportunity for 7–8 hours of sleep. This requirement would create a substantial disincentive for using 16-hour shifts. Specifically, individuals who work 16-hour shifts would not be eligible to return to work at the beginning of the next normally available shift.

The NRC acknowledges that 16-hour shifts can substantially increase the probability for human error. Accordingly, the NRC believes that fatigue management must include limiting the use of 16-hour shifts to the extent practicable and applying effective behavioral observation and fatigue mitigation strategies when such conditions are unavoidable. The training requirements in the proposed rule would provide individuals and supervisors with the knowledge to make effective decisions regarding fatigue, which should result in the scheduling of fewer 16-hour shifts. The proposed rule would also require licensees to establish a process to be followed if an individual declares that he or she is not fit for duty, for any reason, including fatigue. The NRC would expect that individuals who believe that they are incapable of safely and competently completing a 16-hour shift would make an appropriate self-declaration.

Collectively, the requirements of the proposed rule would be expected to: (1) Substantially limit the frequency of 16-hour shifts, (2) provide assurance that, when such work hours are necessary, licensees have the knowledge and abilities to assess the potential for degraded performance and need for fatigue countermeasures, and (3) ensure workers have a process for resolving concerns regarding fatigue from extended work hours. As a

consequence, the NRC believes that the proposed requirements are appropriate for maintaining worker fitness for duty and, thereby, protecting public health and safety and the common defense and security.

Comment 15 (Barry Quigley, petitioner): The work hour controls in Subpart I should apply to all individuals performing risk-significant work, such as engineers and all fire brigade personnel.

Response: The proposed requirements would cover all personnel who perform duties within one of the following job duty groups: (1) Operating or on-site directing of the operation of systems and components that a risk-informed evaluation process has shown to be significant to public health and safety; (2) performing maintenance or on-site directing of the maintenance of structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety; (3) performing Health Physics or Chemistry duties required as a member of the on-site emergency response organization minimum shift complement; (4) performing the duties of a Fire Brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; and (5) performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson (hereinafter referred to as security personnel).

Engineers who direct, on-site, the maintenance or operations of risk-significant structures, systems, and components would be subject to group work hour controls. The NRC believes those engineers who perform such duties should be subject to group work hour controls. A few examples of such direction would be engineers who act as test directors in the control room, engineers who provide direction to maintenance crews (such as during an outage), engineers who provide technical direction and guidance for reactivity manipulations and power changes, as well as many other similar engineering functions. However, the NRC does not believe that engineers, or other individuals, who do not perform those duties should be subject to group work hour controls. Many engineers do not direct maintenance or operations, and many others do not work with risk-significant plant systems, structures, or components. A few examples of engineering activities that the NRC does not consider direction include design modifications, assisting in procedure changes (including writing and modifying procedures for covered work groups such as operations), performing technical analyses, monitoring the performance of systems and recommend maintenance, as well as many other similar engineering functions.

The NRC is not proposing to require licensees and other entities to subject all engineers to work hour controls because many engineering tasks, such as modification design, are reviewed by managers, peer reviewers, and others before being implemented. The same is the case for routine performance monitoring. Any maintenance recommended by an engineer as a result of performance monitoring would typically be reviewed by managers or work planners in maintenance. Therefore, the NRC has reasonable assurance that errors committed by an engineer in these circumstances would be found and corrected through the normal plant review processes.

In the case of fire brigade personnel, the NRC is proposing that only those fire brigade personnel who are responsible for understanding the effects of fire and fire suppressants on safe shutdown capability would be subject to work hour controls. The NRC does not propose to include other members of the fire brigade because they are principally engaged in manual actions. These types of actions do not require substantial analysis and decision-making capability, and individuals engaged in manual actions would be expected to perform those actions without significant degradation from fatigue. Diagnosis and decision-making functions are affected by fatigue to a much greater extent, and are collectively more critical to emergency response. For these reasons, the NRC proposes work hour controls on only the fire brigade members who are responsible for understanding the effects of fire and fire suppressants on safe shutdown capability.

Subpart J Recordkeeping and Reporting Requirements

There are no significant comments that were not incorporated into the proposed rule text.

Subpart K Inspections, Violations, and Penalties

There are no significant comments that were not incorporated into the proposed rule text.

VI. Section-by-Section Analysis of Substantive Changes

The proposed rule would be organized into eleven subparts that are comprised of related requirements, as follows:

Subpart A—Administrative Provisions
Subpart B—Program Elements
Subpart C—Granting and Maintaining Authorization
Subpart D—Management Actions and Sanctions to be Imposed
Subpart E—Collecting Specimens for Testing
Subpart F—Licensee Testing Facilities
Subpart G—Laboratories Certified by the Department of Health and Human Services
Subpart H—Determining Fitness-for-Duty Policy Violations and Determining Fitness
Subpart I—Managing Fatigue
Subpart J—Recordkeeping and Reporting Requirements
Subpart K—Inspections, Violations, and Penalties

A detailed cross-reference table between the current and proposed Part 26 provisions is included at the end of this notice.

Appendix A of the current rule would be deleted and the detailed requirements for conducting drug and alcohol testing that are contained in Appendix A to 10 CFR Part 26 would be moved to Subpart E [Collecting Specimens for Testing], Subpart F [Licensee Testing Facilities], and Subpart G [Laboratories Certified by the Department of Health and Human Services] of the proposed rule.

Subpart A—Administrative Provisions

Section 26.1 Purpose

Section 26.1 [Purpose] of the proposed rule would amend the language of the corresponding section of the current rule. The proposed paragraph would delete the term, ''certain aspects,'' as unnecessary. The proposed paragraph would add the term, ''implementation,'' to the phrase in the current rule which states, ''for the establishment and maintenance of * * * fitness-for-duty programs,'' in order to convey more accurately that the proposed rule includes requirements for implementing FFD programs, in addition to requirements for establishing and maintaining such programs. The portion of current § 26.1 that refers to the entities who are subject to the rule would be moved to proposed § 26.3 [Scope] in order to consolidate this information in a more appropriate location.

Section 26.3 Scope

Proposed § 26.3 [Scope] would renumber, reorganize, and amend current § 26.2 [Scope]. In general, proposed § 26.3 would retain the list of entities who are subject to the current rule and add other entities. However, the provisions in current § 26.2 that specify the individuals whose job duties require them to be subject to the rule and exempt certain other individuals

would be moved to a new section, proposed § 26.25 [Individuals subject to the fitness-for-duty program]. The provisions that would be moved to proposed § 26.25 include the second sentence of current § 26.2(a), the first sentence of current § 26.2(b), and the portion of the second sentence of current § 26.2(d) that pertains to personnel. The NRC determined that separating into two different sections the requirements that address the entities who are subject to the rule and the requirements that address the individuals who must be subject to the rule would make the two sets of provisions easier to locate within the rule without compromising the intended meaning of these provisions.

Proposed § 26.3(a) would add combined operating license holders to be consistent with the revised 10 CFR Part 52 licensing process for new reactors.

Proposed § 26.3(b) would retain the requirement in the first sentence of current § 26.2(a) that licensees who are authorized to possess or use formula quantities of SSNM or to transport formula quantities of SSNM are subject to the regulations in this part. However, these licensees would not be subject to the requirements contained in proposed Subpart I [Managing Fatigue] for the reasons that will be discussed later in this document in relation to proposed § 26.195 [Applicability].

Proposed § 26.3(c) would retain the requirements of current § 26.2(d) and add references to entities other than a corporation because there may be entities who are organized as firms, partnerships, limited liability companies, or associations who may also obtain a certificate or approved compliance plan under Part 76 and elect to engage in activities involving formula quantities of SSNM. The proposed paragraph would also add a cross-reference to proposed § 26.25(a)(3), which specifies the individuals who are employed by or under contract to these entities who would be subject to Part 26. The entities in the proposed paragraph would not be subject to the requirements in proposed Subpart I [Managing Fatigue] for the reasons that will be discussed later in this document in relation to proposed § 26.195 [Applicability].

Proposed § 26.3(d) would retain the meaning of the portion of current § 26.23(a)(1) that requires a contractor/vendor (C/V) FFD program to meet the standards of this part if licensees rely upon the C/V's FFD program to meet the requirements of this part, but amend some of the terminology used in the current rule. The proposed paragraph would add C/Vs to the list of entities who are subject to Part 26 in proposed § 26.3 in order to more clearly convey that C/Vs may be directly subject to NRC inspection and enforcement actions than the current rule language implies. The current rule text presents the applicability of the rule's requirements to a C/V's FFD program in terms of the contractual relationship between a licensee and the C/V. For example, current § 26.23(a)(1) states, ''The contractor or vendor is responsible *to the licensee* [emphasis added] for adhering to the licensee's fitness-for-duty policy, or maintaining and adhering to an effective fitness-for-duty program; which meets the standards of this part.'' This paragraph, and others in the current rule, could be interpreted as implying that a C/V is accountable to the licensee but not to the NRC, should significant weaknesses be identified in the C/V's FFD program upon which a licensee relies. However, this interpretation would be incorrect. Therefore, proposed § 26.3(d) would include C/V FFD programs and program elements upon which licensees and other entities rely within this section to convey more accurately that C/Vs are directly accountable for meeting the applicable requirements of Part 26, rather than accountable only through their contractual relationships with the licensees and other entities who are subject to the rule. This clarification is also necessary to maintain the internal consistency of the proposed rule because some provisions of the proposed rule apply only to C/Vs, including, but not limited to proposed § 26.217(g).

The phrases, ''program elements'' and ''to the extent that licensees and other entities rely upon those C/V FFD programs or program elements to meet the requirements of this part,'' would be used in proposed § 26.3(d) because C/Vs would need only meet the requirements of Part 26 for those FFD program elements upon which licensees and other entities rely to meet the requirements of the rule. For example, a C/V may choose to implement all of the program elements that are required for a full FFD program under the proposed rule except drug and alcohol testing. In this case, the proposed rule would not require the C/V to address drug and alcohol testing in the C/V's FFD policy, procedures, and training program; establish contracts with drug-testing laboratories; collect specimens for drug and alcohol testing; or meet any other requirements in the proposed rule that relate to conducting drug and alcohol testing. However, if a C/V chooses to conduct drug and alcohol testing under some or all of the conditions specified in proposed § 26.31(c) [Conditions for testing], such as for-cause testing, and a licensee or other entity who is subject to Part 26 relies upon the results of the C/V's tests in determining whether to grant authorization to an individual (see proposed Subpart C [Granting and Maintaining Authorization]), then the use of these two phrases in the proposed paragraph would be correctly interpreted as meaning that the C/V's drug and alcohol testing program element must meet the proposed rule's requirements related to drug and alcohol testing when conducting the tests on which the licensee or other entity relies. By contrast, if a C/V implements an FFD program element that is addressed in this part, but that program element is not relied upon by a licensee or other entity who is subject to this part, then the proposed paragraph would not require the C/V to meet the applicable Part 26 requirements for that FFD program element.

Proposed § 26.3(d) would require C/Vs to meet the requirements of proposed Subpart I [Managing Fatigue], if any nuclear power plant licensees rely upon a C/V's fatigue management program element to meet the requirements of Subpart I. The applicability of proposed Subpart I to C/Vs will be discussed with respect to proposed § 26.195 [Applicability].

Other provisions of current § 26.23 [Contractors and vendors] would either be eliminated from the proposed rule or moved to other sections of the proposed rule. The current requirement for licensees to retain written agreements with C/Vs in the second sentence of § 26.23 would be moved to proposed Subpart J [Recordkeeping and Reporting Requirements]. The requirement in current § 26.23(a)(1), which requires that individuals who have violated an FFD program must not be assigned to work within the scope of this part without the knowledge and consent of the licensee, would be addressed in proposed Subpart C [Granting and Maintaining Authorization]. The audit requirement contained in current § 26.23(b) would be addressed in proposed § 26.41(d) [Contracts]. The current requirements would be moved to different sections of the proposed rule to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B, by grouping related requirements together in one section or subpart that addresses similar topics.

Proposed § 26.3(e) would retain and update the requirements of current § 26.2(c) to be consistent with revisions to related sections of the proposed rule as well as related parts of this chapter. Combined operating license holders (under Part 52 of this chapter) before the Commission has made the finding under § 52.103 of this chapter would continue to be subject to the rule, as well as combined license applicants who have received authorization to construct under § 50.10(e)(3), construction permit holders (under Part 50 of this chapter), construction permit applicants who have received authorization to construct under § 50.10(e)(3), and holders of manufacturing licenses (under Part 52 of this chapter). For consistency, the proposed paragraph would also replace the current cross-references to other sections of the rule with updated cross-references to the related sections in the proposed rule and replace some terms used in the current paragraph with new terms that would be used throughout the proposed rule. For example, the term, ''chemical testing,'' would be replaced with ''drug and alcohol testing,'' and ''appeals'' would be replaced with ''review'' for reasons that will be discussed below related to proposed § 26.31 [Drug and alcohol testing] and proposed § 26.39 [Review process for fitness-for-duty violations], respectively. Other new terms in the proposed rule that would replace some of the terms used in the current rule are discussed with respect to proposed § 26.5 [Definitions].

Proposed § 26.3(f) would retain the second sentence of current § 26.2(b) because it addresses entities who would not be subject to the proposed rule. The first sentence of current § 26.2(b), which addresses individuals who are not subject to the rule, would be moved to proposed § 26.25 [Individuals subject to the fitness-for-duty program] for organizational clarity in the proposed rule.

Section 26.5 Definitions

Proposed § 26.5 [Definitions] would amend current § 26.3 [Definitions] to (1) clarify some definitions; (2) make the listed terms and their definitions more consistent with those used by other Federal agencies (including the Substance Abuse and Mental Health Services Administration and the Department of Transportation); (3) define new terms used in other sections of the proposed rule; and (4) move definitions into this section from current Section 1.2 of Appendix A to 10 CFR Part 26, which contains definitions of important terms used in Appendix A to Part 26. The proposed rule would also eliminate six terms in current § 26.3 and Section 1.2 of Appendix A to Part 26 because they would be fully defined in the text of the proposed rule or would no longer be used in the proposed rule. In addition, the proposed rule would eliminate redundant definitions of some terms, which appear in both current § 26.3 and Section 1.2 in Appendix A to Part 26. Finally, some definitions would be revised to make them simpler and easier to understand, consistent with the Agency's commitment to using plain language. For example, some definitions in the current rule include requirements that are also contained in other sections of the rule. In these instances, the proposed rule would eliminate the requirements that are embedded in the definitions, but retain the definitions in this section. The requirements would be moved to the related sections of the rule for organizational clarity.

The majority of the proposed changes to this section would be made as a result of adding new requirements for urine drug testing, including specimen validity testing, to the proposed rule. The proposed rule would incorporate advances in the science and technology of urine drug testing that are based on the most recent revision to the HHS Guidelines, as published in the **Federal Register** on April 13, 2004 (69 FR 19643). These proposed changes would require adding terms to proposed § 26.5, modifying a number of the terms that are used in the current rule, and revising the definitions of some terms in the current rule that would also be used in the proposed rule, as follows:

The proposed rule would add several new terms to refer to urine specimens that have characteristics that are inconsistent with those expected of normal human urine, as identified through validity testing. The proposed terms would include ''adulterated specimen,'' ''dilute specimen,'' ''substituted specimen,'' and ''invalid result.'' The proposed rule would also add the term, ''oxidizing adulterant,'' to refer to one class of substances that may be used to adulterate urine specimens. These new terms and proposed definitions would be adapted from the HHS Guidelines.

The proposed rule also would add several terms that are associated with new requirements for maintaining quality control of urine specimen validity and drug testing, such as the term, ''quality control sample.'' The proposed rule would also add definitions of the terms, ''calibrator,'' ''control,'' and ''standard,'' to distinguish among the types of quality control samples that are associated with urine specimen testing in Subparts F [Licensee Testing Facilities] and G [Laboratories Certified by the Department of Health and Human Services] of the proposed rule.

The proposed rule would change certain terms that describe drug and alcohol tests to reflect the addition of urine specimen validity testing requirements. The changes would include replacing the term, ''initial or screening test,'' with more specific terms to distinguish between drug testing and testing for urine specimen validity. The terms, ''validity screening test,'' ''initial drug test,'' and ''initial validity test,'' would be added to refer to the first tests of a urine specimen that would be performed to determine whether a urine specimen is free of drugs and drug metabolites and has the expected characteristics of normal urine, or whether further testing of the specimen is required. The proposed rule would also modify the definition of ''initial drug test'' in the current rule to eliminate the requirement that the test must be performed using immunoassay techniques because that requirement would be addressed in the text of the proposed rule. The proposed rule would replace the general term, ''confirmatory test,'' in the current rule with the more specific terms, ''confirmatory drug or alcohol test'' and ''confirmatory validity test.'' In addition, the definitions of these terms in the proposed rule would not include requirements for the methods to be used in performing confirmatory tests because these requirements would be addressed in the text of the proposed rule. Therefore, the requirement that confirmatory drug testing be performed using gas chromatography/mass spectrometry (GC/MS) testing would be removed from the definition. The proposed rule would also eliminate the reference to GC/MS testing of blood samples for confirmatory alcohol testing in the definition of ''confirmatory drug or alcohol test'' because the proposed rule would no longer give donors the option to provide a blood sample for alcohol confirmatory testing, as discussed with respect to proposed § 26.83(a).

The proposed rule would modify several terms that are used in the current rule to describe the results of drug and alcohol testing, in order to reduce the number of terms, increase consistency with terms used by other Federal agencies, and address the addition of urine specimen validity testing requirements. Among these changes, the proposed rule would add the term ''non-negative test result.'' The term, ''non-negative,'' would be used to refer to any adverse test result from the different types of testing that would be

required under the proposed rule. For example, the proposed rule would use ''non-negative'' to refer to positive results from alcohol testing as well as results of drug and validity tests of urine specimens that indicate the presence of drugs or drug metabolites, and/or that the specimen may be adulterated, dilute, substituted, or invalid. The term, ''presumptive positive test result,'' would be eliminated from the proposed section because it would no longer be used in the rule text. The updated term, ''non-negative initial test result,'' would be used in the rule text instead. The proposed rule would also change the term, ''confirmed positive test,'' to ''confirmed test result'' to clarify that this term refers to the results of the MRO's review of drug and validity tests of urine specimens and to positive results of a confirmatory alcohol test, rather than to a type of testing. The proposed rule would also remove the reference to testing of blood specimens for alcohol that is contained in the current definition of ''confirmed positive test'' from the definition of ''confirmed test result'' because blood specimens would no longer be collected at the donor's request for confirmatory alcohol testing, as discussed with respect to proposed § 26.83(a).

The proposed rule would also add two terms that refer to testing for very low levels of drugs, drug metabolites, or adulterants in a urine specimen, ''limit of detection'' (LOD) and ''limit of quantitation'' (LOQ). The proposed definitions of these terms would be adapted from the HHS Guidelines.

In addition, the definitions of two terms in the current rule would be modified to be consistent with the new drug and alcohol testing terminology that would be used throughout the proposed rule. The proposed rule would amend the definition of ''cutoff level'' to refer to ''non-negative,'' rather than ''positive,'' test results to clarify that the term is also applicable to the interpretation of results from specimen validity testing. And, the definition of ''Medical Review Officer'' (MRO) would be amended to refer to a ''non-negative'' test result, rather than a ''positive'' test result, to clarify that the MRO would review validity test results in addition to drug test results.

The proposed rule would also add several terms that would be necessary to implement the proposed requirements contained in two new subparts of the regulation, proposed Subpart C [Granting and Maintaining Authorization] and proposed Subpart I [Managing Fatigue]. The proposed rule would add six new terms that are related to the requirements of proposed Subpart C. The term, ''potentially disqualifying fitness-for-duty (FFD) information,'' would be added to refer to the types of information that licensees and other entities who are subject to the rule would consider when deciding whether to grant or maintain an individual's authorization to have the types of access or perform the job duties that are listed in proposed § 26.26(a). The proposed rule would also add definitions for four terms that are used within the definition of ''potentially disqualifying FFD information,'' including ''substance abuse;'' ''legal action;'' ''employment action;'' and ''reviewing official.'' The term, ''best effort,'' would also be added to refer to the actions that a licensee or other entity who is subject to the rule must take to obtain the information that is necessary to complete a suitable inquiry and employment history check, as discussed with respect to proposed § 26.63(a).

The proposed rule would also add several terms that are necessary to implement the requirements of proposed Subpart I [Managing Fatigue]. These terms would include ''fatigue,'' ''acute fatigue,'' and ''cumulative fatigue,'' which refer to the degradation in an individual's cognitive (mental) and motor (physical) functioning resulting from inadequate rest within the past 24 hours or over successive days and weeks, respectively. The proposed rule would use the term, ''alertness,'' to refer to an individual's ability to remain awake and sustain attention, which is adversely affected by fatigue. The term, ''circadian variation in alertness and performance,'' would be added to define a factor that licensees would consider when conducting a fatigue assessment under proposed § 26.201 [Fatigue assessments]. The proposed rule would also add the term, ''increase in threat condition,'' to refer to circumstances in which the proposed rule would provide licensees with some flexibility in implementing the work hour controls of proposed § 26.199 [Work hour controls].

The proposed rule would also add eight new terms related to other proposed revisions to the current rule. Specifically, ''analytical run'' would be added for use in establishing amended performance testing requirements for licensee testing facilities in proposed § 26.137 [Quality assurance and quality control]. The term, ''directing,'' would be added to clarify new requirements for MRO staff under proposed § 26.183(d) and the scope of individuals who would be subject to work hour controls in proposed § 26.199(a). For consistency with the use of the term in the related regulations of other Federal agencies, the term, ''donor,'' would replace the current terms that are used to refer to an individual from whom a specimen is collected for drug or alcohol testing. The term, ''nominal,'' would be added to refer to the leeway in the time periods within which certain requirements must be met, such as the requirement for annual FFD refresher training in proposed § 26.29(c)(2). The term, ''other entity,'' would be added to refer to organizations who would be subject to Part 26, but who are not licensed by the NRC, including, but not limited to, the organizations who hold the NRC certificates or permits listed in proposed § 26.3 [Scope]. The terms, ''formula quantity'' and ''strategic special nuclear material'' (SSNM), would be defined consistently with the definitions of the same terms in 10 CFR 70.4. The term, ''subversion and subvert the testing process,'' would be added to clarify the language of new provisions related to urine specimen validity testing, as discussed with respect to proposed § 26.31(d)(3)(i), and new sanctions that would be imposed on individuals who are subject to the proposed rule, in proposed § 26.75(b).

Proposed § 26.5 would also retain and amend a number of other definitions currently contained in § 26.3 and Section 1.2 in Appendix A to Part 26, as follows.

The proposed rule would revise the current definition of ''aliquot'' to clarify that an aliquot is a representative sample of a urine specimen that may be used for testing. The amended definition would be consistent with the same definition in the HHS Guidelines.

The proposed rule would simplify the current definition of ''blood alcohol concentration'' (BAC) by deleting references to the instruments and devices that licensees and other entities are permitted to use for alcohol testing. The text of proposed § 26.91 [Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use] would specify acceptable devices for alcohol testing under the proposed rule.

The proposed rule would revise the definition of ''category IA material'' to conform with the current definition contained in 10 CFR 74.4.

The proposed rule would expand the definition of ''chain of custody'' to indicate that the terms ''chain of custody'' and ''custody and control'' are synonymous. This proposed change would be made in response to stakeholder requests during the public meetings discussed in Section V.

The definition of ''collection site'' would be modified to include a reference to oral fluids as specimens

that are acceptable for initial alcohol testing. The basis for permitting the use of oral fluids for initial alcohol testing is discussed with respect to proposed § 26.83(a).

The proposed rule would replace the term, ''collection site person,'' with the term, ''collector,'' to simplify the terminology used to refer to individuals who collect specimens for testing and for consistency with the terminology used by other Federal agencies. In addition, the definition would no longer include the qualifications required for collectors because they would be specified in proposed § 26.85 [Collector qualifications and responsibilities].

The proposed rule would add the term ''contractor/vendor'' (C/V) and combine the definitions of ''contractor'' and ''vendor'' in the current rule, because the proposed rule would not distinguish between the two types of entities.

The proposed rule would update the definition of ''HHS-certified laboratory'' to reference the most recent version of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs.

In addition, the proposed rule would simplify the definition of ''licensee testing facility'' by eliminating the reference to collecting specimens for alcohol testing in the current definition, because alcohol testing typically occurs at a collection site, rather than at the licensee testing facility.

Finally, the proposed rule would eliminate six terms that are defined in current § 26.3 and Section 1.2 in Appendix A to Part 26. Specifically, the proposed rule would eliminate ''followup testing,'' ''random test,'' ''suitable inquiry,'' ''reason to believe,'' and ''split specimen'' because the text of the proposed rule defines them in the section where each term is used. The proposed rule would also eliminate the term, ''permanent record book,'' in current Section 1.2 in Appendix A to Part 26 because laboratories now use other mechanisms to maintain testing records. Therefore, this term would no longer be used in the proposed rule.

Section 26.7 Interpretations

Proposed § 26.7 [Interpretations] would retain current § 26.4 [Interpretations] but move the qualifying phrase, ''other than a written interpretation by the General Counsel,'' to the end of the sentence to improve the clarity of the sentence. This proposed change would be made in keeping with the Commission's commitment to using plain language in its regulations and to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

Section 26.8 Information Collection Requirements: OMB Approval

Proposed § 26.8 [Information collection requirements: OMB approval] would amend current § 26.8 [Information collection requirements: OMB approval] to reflect the modified sections of the proposed rule in which recordkeeping requirements would be incorporated.

Section 26.9 Specific Exemptions

Proposed § 26.9 [Specific Exemptions] would revise current § 26.6 [Exemptions] to include the citation of 10 CFR 50.12 and 70.17. This proposed change would be made to ensure consistency between Part 26 and these related requirements.

Section 26.11 Communications

Proposed § 26.11 [Communications] would be added to improve consistency with similar sections in other parts of 10 CFR and ensure that communications with the NRC are addressed and, therefore, processed properly.

Subpart B—Program Elements

Section 26.21 Fitness-for-Duty Program

Proposed § 26.21 [Fitness-for-duty program] would require that licensees and other entities who are subject to the rule must establish, implement, and maintain FFD programs that comply with the applicable requirements of this part. This statement would be added to serve as an introduction to the remaining text of the proposed rule, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B. The term, ''applicable,'' would be included in this sentence because not all the requirements in the proposed regulation would apply to all the entities listed in proposed § 26.3(a)–(d). For example, the requirements in proposed Subpart I [Managing Fatigue] would apply only to nuclear power plant licensees and any C/Vs upon whom they rely to meet the requirements of this part, as discussed with respect to proposed § 26.195 [Applicability]. As another example, the proposed rule would retain the current requirement in § 26.2(c), which states that nuclear power plant construction permit holders must establish a drug and alcohol testing program that includes random testing, but would not require these entities to meet the requirements of the proposed regulation related to drug and alcohol testing, including, but not limited to, proposed § 26.31 [Drug and alcohol testing] and proposed Subpart E [Collecting Specimens for Testing].

The second sentence of the proposed paragraph, which is based on current § 26.23(b), would retain permission for licensees and other entities to rely upon a C/V's FFD program or program elements to meet the requirements of this part, if the C/V's FFD program or program element meets the applicable requirements of this part. The other requirements contained in current § 26.23 [Contractors and vendors] are discussed with respect to proposed § 26.23 [Performance objectives].

Section 26.23 Performance Objectives

Proposed § 26.23 [Performance objectives] would amend current § 26.10 [General performance objectives], as follows:

The proposed rule would amend current § 26.10(a). The proposed rule would divide the performance objectives contained in current § 26.10(a) into two paragraphs (proposed § 26.23(a) and (b), respectively) to clarify that the performance objective of assuring that personnel are trustworthy and reliable is separate and distinct from the performance objective of assuring that personnel are fit for duty.

Proposed § 26.23(a) would require that FFD programs provide reasonable assurance that persons who are subject to this part are trustworthy and reliable as demonstrated by the avoidance of substance abuse and the adverse behaviors that accompany it. The NRC has placed an increased emphasis on the trustworthiness and reliability of individuals who have access to certain types of sensitive information, certain types of radiological materials, and protected areas in nuclear power plants since September 11, 2001. This level of emphasis is to reduce the risk of an insider threat, maintain public health and safety, and provide for the common defense and security in the post-September 11, 2001, threat environment. These are the same individuals who would be subject to the proposed rule. Because these individuals have unimpeded access to sensitive information and safety equipment and systems, their trustworthiness and reliability are essential. Substance abuse by such individuals presents an unacceptable risk to public health and safety and the common defense and security in several ways.

First, substance abuse increases the likelihood that such individuals may pose an insider threat by increasing an individual's vulnerability to coercion.

Under 10 CFR 73.1, a passive insider is defined as an individual who obtains or attempts to obtain safeguards or other relevant information, such as a nuclear power plant's physical configuration and design, and who does not have a functional or operational need to know such information. Section 73.1 defines an active insider as a knowledgeable individual who, while within the protected area of a nuclear power plant in an unescorted status, takes direct action to facilitate entrance and exit, disable alarms and communications, and/or participates in a violent attack. An individual who uses illegal drugs may be coerced into cooperating, actively or passively, with a terrorist in an attempt to commit radiological sabotage if, for example, the terrorist were to threaten the individual with revealing his or her illegal drug use or was somehow able to withhold drugs from an individual who is addicted.

Second, an individual's judgement and self-control are impaired while an individual is abusing drugs or alcohol. When an individual is intoxicated from abusing any of the substances for which testing is conducted under Part 26, including alcohol, the individual is more likely to inadvertently reveal sensitive information that terrorists could use in a radiological sabotage attempt than when he or she is not intoxicated.

Third, the use of illegal drugs establishes that an individual is willing to disobey the law, thus indicating that the individual will disregard other rules and regulations. The use of illegal drugs raises questions about the individual's trustworthiness and reliability in terms of scrupulously following the regulations, procedures, and other requirements, such as safeguards requirements, that ensure the protection of public health and safety.

Many provisions of the current rule provide means to identify and reduce the risks posed by any individuals whose substance abuse casts doubt on their trustworthiness and reliability. In combination with other measures the NRC has taken since September 11, 2001, a number of the proposed changes to the current rule would provide further assurance that individuals who are subject to the rule are trustworthy and reliable. Proposed changes to strengthen the effectiveness of the rule in assuring individuals' trustworthiness and reliability include, but are not limited to:

(1) Adding requirements for specimen validity testing to identify individuals who are willing to attempt to subvert the testing process, and so may be willing to subvert other rules and regulations that are important for public health and safety and the common defense and security;

(2) Increasing the rigor of the evaluations that licensees and other entities must perform before granting authorization to an individual who has previously violated Part 26 requirements to ensure that the individual has ceased abusing drugs or alcohol; and

(3) Imposing more stringent sanctions on individuals who violate Part 26 requirements, including, but not limited to, permanently denying authorization to have the types of access and perform the job duties listed in proposed § 26.25(a) to any individual who attempts to subvert the drug and alcohol testing process.

The NRC believes that implementation of these provisions of the proposed rule, in addition to the other, related measures the Agency has taken in the post-September 11, 2001, threat environment, provides an increased level of requirements appropriate for the new threat environment, such that there remains reasonable assurance that individuals who are subject to the rule are trustworthy and reliable.

Proposed § 26.23(b) would retain the performance objective of providing reasonable assurance that personnel are fit for duty, which appears in current § 26.10(a). The use of the term, ''reasonable,'' to describe the level of assurance required by the rule reflects the NRC's awareness that an individual's fitness at any particular moment in time may be affected by many different factors. Some of these factors may be difficult for the licensee or other entity to detect and many (such as a transitory illness) may not warrant management action or the imposition of sanctions because they would not pose a significant risk to public health and safety.

As mentioned above, the level of requirements associated with achieving reasonable assurance of trustworthiness and reliability is greater than that associated with reasonable assurance that individuals are not impaired. Another example of this is with regard to the sanctions that the proposed rule would require licensees and other entities to impose on individuals who demonstrate questionable trustworthiness and reliability compared to the management actions licensees would be expected to take with individuals who may be impaired. For example, if an individual demonstrates dishonesty by attempting to bring a substitute urine specimen to the collection site with a clear intent to subvert the testing process or demonstrates a willingness to break the law by possessing illegal drugs on site, the proposed rule (under proposed §§ 26.75(b) and 26.75(c), respectively) would require the licensee or other entity to terminate the individual's authorization to have the types of access and perform the job duties that are listed in proposed § 26.25 [Individuals subject to the fitness-for-duty program]. Terminating the individual's authorization would be necessary to provide reasonable assurance that the individual could pose no further risk to public health and safety or the common defense and security. By contrast, the current and proposed rules would not require a licensee or other entity to terminate an individual's authorization if he or she is mentally or physically impaired while on duty from such transitory causes as illness and emotional stress resulting from a family problem. For example, an individual who arrives at work with a severe migraine headache may suffer impairment on the job that would adversely affect the individual's ability to perform his or her duties safely and competently while the headache persists. The proposed (and current) rule (under proposed § 26.77(b)(3) and current § 26.27(b)(1), respectively) would require the licensee or other entity to take action to prevent the individual from performing the job duties that require the individual to be subject to this part, if the individual's fitness is questionable. These actions could include, for example, assigning the individual to other duties until medication brings the headache under control or sending the individual home until the headache resolves. Such actions would meet the performance objective of providing reasonable assurance that the individual is fit when he or she resumes his or her normal duties. However, it would be unreasonable for a licensee's FFD policy to impose sanctions on the individual, such as terminating his or her authorization. Sanctions could have no deterrent effect on the recurrence of the individual's headache, which is one purpose of including requirements for minimum sanctions in Part 26. In addition, there would not be any continuing risk to public health and safety from permitting the individual to resume his or her duties once the headache is resolved.

Another difference between the performance objectives of providing ''reasonable'' assurance of trustworthiness and reliability and ''reasonable'' assurance that the

individuals who are subject to the proposed rule are fit for duty lies in the severity of the enforcement actions that the NRC would be likely to take against an FFD program that failed to meet these performance objectives. The NRC's enforcement actions would be severe in the case of an FFD program that, for example, granted authorization to an individual who had previously had his or her authorization permanently denied under proposed § 26.75(b) but would be unlikely to take enforcement action in the case of an FFD program that failed to remove an individual who was experiencing impairment related to family stress from his or her duties under proposed § 26.77(b)(3).

Proposed § 26.23(c) would retain the performance objective in current § 26.10(b), which is to ''provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this part,'' but would replace the phrase, ''perform activities within the scope of this part,'' with the phrase, ''perform the job duties that require them to be subject to this part.'' The proposed rule would make this change for clarity in the language of the rule. As discussed further with respect to proposed § 26.25 [Individuals subject to the fitness-for-duty program], the proposed rule would require that certain individuals must be subject to an FFD program based on their job duties, which include not only performing activities, such as measuring, guarding, or transporting Category IA material, but also having access to certain locations, material, and sensitive information, such as nuclear power plant protected areas, Category IA material, procedures and records for safeguarding SSNM, and the drug test results of an individual who was tested before the MRO reviews the drug test results. Therefore, the phrase, ''perform the job duties that require them to be subject to this part,'' would be more accurate. Replacing the current phrase with the more accurate phrase would be consistent with Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

Proposed § 26.23(d) would amend current § 26.10(c) to require that FFD programs must provide reasonable assurance that the workplaces that are subject to this part are free from the presence and effects of illegal drugs and alcohol. The proposed rule would revise the current performance objective to ''have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances' for several reasons. First, the terms, ''drug-free'' and ''free from the effects of such substances,'' do not accurately capture the NRC's intent with respect to this performance objective. These terms could be misunderstood as requiring FFD programs to have the goal of preventing any drugs and their effects from being present in the workplace, which could include medications that individuals who are subject to the rule may take to treat health problems. Therefore, the proposed rule would replace ''drug-free'' and ''free of the effects of such substances'' with the more specific phrase, ''free from the presence and effects of illegal drugs and alcohol'' to refer to the specific substances that would be proscribed. The proposed revision would clarify that the NRC does not intend for FFD programs to prohibit individuals from taking the medications they need to maintain their health or bringing those medications to the workplace. This proposed change would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule.

The proposed performance objective would also replace the phrase, ''have a goal of,'' in the current rule with the phrase, ''provide reasonable assurance,'' which more accurately captures the intent of this performance objective. The phrase, ''have a goal of,'' would be eliminated because proposed § 26.23(d) is a performance objective and, therefore, the phrase is unnecessary. This proposed change would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule, without changing the intended meaning of the performance objective.

Proposed § 26.23(e) would be added to require licensees and other entities to provide reasonable assurance that the effects of fatigue and degraded alertness on individuals' abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety. This proposed performance objective would be added to specify the objective of the requirements concerning worker fatigue that would be added to the proposed rule. Worker fatigue cannot be measured or controlled with precision, and licensees and other entities do not have direct control over all matters that may influence worker fatigue. Therefore, proposed § 26.23(e) would establish a ''reasonable assurance'' criterion for the proposed performance objective. Worker fatigue can result from many causes (*e.g.*, work hours, sleep disorders, demands outside the workplace). In addition, individuals differ in their responses to conditions that cause fatigue. As a consequence, work hour limits alone do not address all causes of fatigue, nor do they prevent fatigue from work hours for all workers. Contemporary methods for addressing worker fatigue (*e.g.* Rogers, 1996, 1997; Hartley, 1998; Carroll, 1999) are commonly referred to as ''fatigue management'' programs and use diverse methods (*e.g.*, training, behavioral observation, fatigue countermeasures) in addition to work hour controls to prevent, detect, and mitigate fatigue. Accordingly, proposed § 26.23(e) would establish a performance objective of reasonable assurance that effects of fatigue and degraded alertness on individuals' abilities to safely and competently perform their duties are ''managed'' commensurate with maintaining public health and safety. The proposed performance objective would permit licensees and other entities to apply risk-informed fatigue management controls for individuals consistent with the significance of their work activities to the protection of public health and safety.

Section 26.25 Individuals Subject to the Fitness-for-Duty Program

Proposed § 26.25 [Individuals subject to the fitness-for-duty program] would be added to group together in one section the provisions of the proposed rule that specify the individuals who must be subject to the FFD program, based on their job duties, and those who would not be subject to the FFD program. This proposed change would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule, by grouping related requirements together within the rule.

Proposed § 26.25(a)(1)–(a)(3) would amend the portions of current § 26.2(a) and (d) that describe the individuals whose job duties require them to be subject to Part 26 by presenting the requirements in separate paragraphs. This organizational change would be made to make it easier for users to locate these requirements within the rule text and to support cross-referencing to these paragraphs from other portions of the rule, so that it is unnecessary to repeat the relevant list of job duties each time the rule refers to a specific group of individuals, as the organization of the current rule has required [see, for example, current § 26.27(a)(1), (b)(2), and (b)(3)]. This proposed change would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

The proposed rule would add § 26.25(a)(4) to clarify the NRC's original

intent that FFD program personnel must be subject to the FFD program. Although current Section 2.3 in Appendix A to Part 26 requires licensees to carefully select and monitor individuals who are responsible for administering the drug and alcohol testing program based upon the highest standards of honesty and integrity, some licensees' testing programs did not include all of the FFD program personnel who the NRC originally intended to be subject to testing. The proposed change would be made to clarify the NRC's original intent because the actions of these individuals have an ongoing effect on public health and safety and the common defense and security as a result of their responsibility to ensure that FFD programs are effective. In addition, these individuals' actions affect the confidence that the public, management, and individuals who are subject to testing have in the integrity of the program and the accuracy and reliability of test results. Individuals who are involved in the day-to-day operations of an FFD program are in a position to permit substance abusers to remain undetected. For example, specimen collectors could inadvertently commit errors when testing others as a result of being impaired from drug or alcohol abuse or intentionally omit testing an individual because of motives associated with maintaining a collector's substance abuse or empathy with an abuser. Furthermore, several reported incidents have confirmed the need to assure that FFD program personnel meet the highest standards of honesty, integrity, reliability, and trustworthiness. For example, one licensee added specimen collectors to the testing pool after investigating an allegation and determining that two collectors were substance abusers. In another instance, a contracted MRO who was not in the testing pool was reported to be an alcoholic and an abuser of prescription drugs. Some MROs who provide their services to other Federally regulated industries have also been identified as substance abusers. Therefore, the proposed revision to current § 26.2(a) would fulfill the NRC's original objective and require licensees and other entities to extend their programs to include FFD personnel who (1) can link test results with the individual who was tested before an FFD policy violation determination is made, including, but not limited to the MRO; (2) make determinations of fitness; (3) make authorization decisions; (4) are involved in selecting or notifying individuals for testing; or (5) are involved in the collection or on-site testing of specimens. Although job titles and responsibilities may differ among different Part 26 FFD programs, examples of FFD program personnel who would be subject to Part 26 under the proposed rule would include, but would not be limited to, the following: The FFD program manager under proposed § 26.25(a)(4)(i)–(a)(4)(v); the MRO and MRO staff under proposed § 26.25(a)(4)(i); the licensee's or other entity's reviewing officials under proposed § 26.25(a)(4)(iii); specimen collectors under proposed § 26.25(a)(4)(v); SAEs who are under contract to or employed by the FFD program under proposed § 26.25(a)(4)(ii); and licensee testing facility personnel under proposed § 26.25(a)(4)(v). In some cases, information technology personnel who design and implement software programs for selecting individuals for random testing may also be subject to the rule under proposed § 26.25(a)(4)(iv) if such personnel have knowledge of who will be selected for random testing or the ability to affect the selection of specific individuals for random testing.

Proposed § 26.25(b)(1)–(b)(3) would be added to group together in one paragraph the proposed rule's provisions that identify individuals who would not be subject to the rule. This proposed change would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule.

A new provision, proposed § 26.25(b)(1), would be added to the rule as a result of extensive discussions with industry stakeholders at the public meetings mentioned in Section V. Industry stakeholders expressed strong concern that the related language in the Affirmed Rule (which was also discussed in Section V), which delineated the FFD program personnel who must be subject to the Part 26, was too broad. Stakeholders agreed that FFD program personnel who work on site and are involved in the day-to-day operations of the FFD program should be subject to the rule. However, the stakeholders noted that the language used in the Affirmed Rule was so vague that it could be interpreted as requiring, for example, that off-site human resources staff at a licensee's or other entity's corporate offices, who may have access to some FFD information about individuals, must be covered, as well as any medical or treatment personnel, and their managers, at a hospital or substance abuse treatment facility who provide an occasional FFD program service. These interpretations of the intent of the Affirmed Rule provisions would be incorrect.

The stakeholders also strongly disagreed with the requirement in the Affirmed Rule that some FFD program personnel who maintain offices at other locations than a licensee's or other entity's facilities and are not involved in day-to-day program operations, such as EAP counselors and some contract MROs, should be subject to the rule. The stakeholders indicated that they believe the honesty and integrity of such off-site personnel is maintained through their professions' oversight and standards, with the result that requiring these individuals to be subject to the rule would create a significant and unnecessary regulatory burden. Stakeholders stated that the regulatory burden would result from (1) the significant logistical difficulties involved in ensuring that these individuals are subject to behavioral observation and drug and alcohol testing, and (2) excessive costs to hire additional MRO(s) to review any non-negative drug test results from MRO(s) who serve the FFD program.

Based on the stakeholders' input, ''lessons learned'' from FFD program experience since the rule was first implemented, the experience gained by other Federal agencies and their regulated industries, and the continuing need to ensure that FFD program personnel meet the highest standards of honesty and integrity, the NRC added § 26.25(b)(1) to the proposed rule. The proposed paragraph would exclude from the rule individuals who may be called upon to provide an FFD program service to a licensee or other entity in special circumstances and who meet all of the following criteria:

(1) They are not employed by the licensee or other entity;

(2) They do not routinely provide services to the licensee's or other entity's FFD program; and

(3) They do not normally work at a licensee's or other entity's facility.

Examples of individuals who would not be subject to the rule under the proposed provision may include, but would not be limited to, a nurse at a local hospital who collects a single specimen for a post-event test from an individual who has been injured and a counselor at a residential substance abuse treatment facility who performs behavioral observation of a patient while the individual is in residence. Personnel who meet the three criteria specified in the proposed paragraph would be excluded from the FFD program because the limited nature of their involvement with the FFD program makes it unlikely that they would be

subject to coercion or influence attempts to subvert the testing process and the NRC is not aware of any reports indicating that these types of individuals have been involved in any adverse incidents. Therefore, the NRC concurs with the stakeholders that requiring such individuals to be subject to the FFD program would be unnecessary.

However, proposed § 26.25(a)(4) would require MROs and SAEs to be subject to Part 26 (see the discussion of proposed § 26.187 [Substance abuse expert] in Section VI of this document for a detailed description of the SAE's roles and responsibilities under the FFD program), as well as any EAP counselor who serves as the SAE for a licensee's or other entity's FFD program. Individuals who serve in these positions play the key roles of determining whether a non-negative drug test result is an FFD policy violation (*i.e.*, the MRO under proposed § 26.185) and whether an individual is fit to safely and competently perform the job duties that require the individual to be subject to this part (*i.e.*, the SAE). Although the NRC recognizes the significant logistical difficulties and costs that may be associated with covering these individuals, the NRC concluded that MROs and SAEs play such critical roles in the effective functioning of an FFD program that ensuring their continuing honesty and integrity by requiring them to be subject to the rule is warranted and invites further comment on these provisions.

Proposed § 26.25(b)(2) and (3) would retain the first sentence of current § 26.2(b) but divide it into two paragraphs. This organizational change would be made to make it easier to locate these requirements within the rule text and to support cross-referencing to these paragraphs from other portions of the rule. The second sentence of current § 26.2(b) would be moved to proposed § 26.3(e) rather than retained in this paragraph because it addresses entities who would not be subject to the rule, rather than individuals. The proposed changes would be made to meet Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

Proposed § 26.25(c) would be added to provide that persons who are covered by a program regulated by another Federal or State agency that meets the performance objectives of Part 26 need not also be covered by a licensee's or other entity's FFD program. Duplicate testing and training requirements applicable to an appreciable number of individuals working at nuclear facilities have become an increasing problem as the facilities have implemented the Department of Transportation's (DOT) drug and alcohol testing requirements [49 CFR Part 40—65 FR 41944, August 9; 2001]. This proposed revision would reduce the burden on some individuals who are currently subject to Federal and State programs with requirements that duplicate those of Part 26. Minor differences in specific program requirements for conducting drug and alcohol testing would be unlikely to adversely affect the ability of a licensee's or other entity's FFD program to meet the performance objectives of this part. The licensee or other entity would continue to be responsible for implementing any Part 26 program elements that may not be addressed by the alternate Federal or State program. These program elements may include, but would not be limited to, providing behavioral observation and initiating for-cause testing, if necessary, when an individual who is covered by an alternate program is on site at a licensee's or other entity's facility and is performing the job duties that require the individual to be subject to the rule, as well as immediate removal from duty of persons whose fitness may be questionable.

Proposed § 26.25(c)(1)–(c)(6) would list the necessary characteristics of an alternative Federal or State program that, under the proposed rule, licensees and other entities could rely upon to satisfy the requirements of this part for an individual who is subject both to Part 26 and an alternative program. Proposed § 26.25(c)(1) and (3) would permit licensees and other entities to rely on the alternative program to meet the proposed rule's drug testing requirements if the alternative program tests for the drugs and drug metabolites that are specified in the proposed rule at or below the cutoff levels established in the proposed rule and an HHS-certified laboratory conducts the program's specimen validity and drug testing. Similarly, proposed § 26.25(c)(2) would permit licensees and other entities to rely on the alternative program to meet the proposed rule's alcohol testing requirements if the alternative program's alcohol testing procedures and devices meet the proposed rule's requirements and the alternative program uses cutoff levels that are at least as stringent as those specified in proposed § 26.103(a). Proposed § 26.25(c)(4) would permit the licensee or other entity to rely on an alternative program's FFD training if that training addresses the knowledge and abilities listed in proposed § 26.29(a)(1)–(a)(10). Proposed § 26.25(c)(5) would permit licensees and other entities to rely on the alternative program to meet the proposed rule's requirements for an impartial and objective procedure for the review and reversal of any findings of an FFD violation if the alternative program provides such a procedure. And, finally, if the licensee or other entity relies on the alternative program, proposed § 26.25(c)(6) would require the licensee or other entity to ensure that the alternative program would inform the licensee or other entity of any FFD violations.

These proposed provisions would be consistent with the current and proposed rules' approaches to permitting licensees and other entities to rely on C/V FFD programs and program elements to meet the requirements of this part if the C/V's program or program element meets the requirements of this part, as discussed with respect to proposed § 26.21 [Fitness-for-duty programs]. In general, permitting licensees and other entities to rely on FFD programs and program elements that are implemented by others, when those programs or program elements meet the requirements of this part, would fulfill the rule's performance objectives and improve Part 26 by eliminating or modifying unnecessary requirements, which is Goal 5 of this rulemaking, as discussed in Section IV. B. However, an important difference between the proposed rule's permission for licensees and other entities to rely on the programs of other Federal and State agencies, compared to the proposed rule's permission for licensees and other entities to rely on C/V programs, is that the proposed rule would not require licensees and other entities to audit the alternate Federal and State programs under proposed § 26.41 [Audits and corrective action]. Auditing Federal and State programs would be unnecessary because these programs are subject to other, equally effective audit and inspection requirements. Relieving licensees and other entities who are subject to this part from an audit requirement also would be in keeping with Goal 5 of this rulemaking.

Proposed § 26.25(d) would be added to clarify that individuals who have applied for authorization to perform job duties that would require them to be subject to Part 26 would also be subject to some provisions of the proposed rule. The current Part 26 requires an applicant for authorization to provide a written statement related to his or her past activities under this part in current § 26.27(a)(1); provide permission to the

licensee to conduct a suitable inquiry in current § 26.27(a)(2); and submit to pre-access testing in current § 26.24(a)(1). The proposed rule would impose similar requirements on applicants and add others, such as random testing during the short time period that falls between when a licensee or other entity collects specimens for a pre-access test and then grants authorization to the individual. Therefore, proposed § 26.25(d) would ensure the internal consistency of the proposed rule and would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Section 26.27 Written Policy and Procedures

Proposed § 26.27 [Written policy and procedures] would reorganize and amend current § 26.20 [Written policy and procedures]. The proposed rule would reorganize the current section to divide into separate paragraphs the requirements related to the FFD policy and those related to FFD program procedures that are intermixed within the current section. The proposed organizational change would be made so that the requirements related to the FFD policy and procedures would be easier to locate within this section, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

Proposed § 26.27(a) [General] would amend the first paragraph of current § 26.20, which requires licensees to establish and implement written policies and procedures designed to meet the performance objectives and specific requirements of this part and to retain superseded copies of the policies and procedures. The proposed rule would replace the term, ''licensee,'' in the current rule with the phrase, ''licensees and other entities,'' because entities other than licensees would be subject to this requirement, as discussed with respect to proposed § 26.3 [Scope]. The term, ''maintain,'' would be added to the current requirement to ''establish and implement'' written policies and procedures to reflect the fact that licensees and other entities who are subject to Part 26 must occasionally revise FFD program policies and procedures to keep them current when FFD program personnel or other aspects of the FFD program change. The proposed rule would replace ''specific'' with the term, ''applicable,'' in the proposed sentence because all the requirements in Part 26 would not apply to all the licensees and other entities who would be subject to the rule, as discussed with respect to proposed § 26.3 [Scope]. The proposed rule would also eliminate ''designed to'' from this sentence because it is unnecessary. The records retention requirements contained in the second sentence of the current paragraph would be moved to proposed § 26.213(d) in Subpart J [Recordkeeping and Reporting Requirements], which groups together the recordkeeping and reporting requirements that are interspersed throughout the current rule. These proposed changes to the organization and language of current § 26.27 would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

Proposed § 26.27(b) [Policy] would amend current § 26.20(a), which establishes requirements for the written FFD policy. The proposed rule would expand the list of topics that the FFD policy must address. The list of topics to be addressed by the FFD policy would be expanded as a result of discussions with stakeholders during the public meetings described in Section V. Stakeholders noted that the list of topics in the current rule is incomplete because it does not include many topics about which individuals who are subject to the policy should be aware in order to be able to comply with the policy. Therefore, the proposed rule would add topics to the policy content requirements in current § 26.20(a) to ensure that FFD policies will be complete. This proposed change would be made to meet Goal 7 of this rulemaking, as it relates to protecting the due process rights of individuals who are subject to Part 26, as discussed in Section IV. B.

Proposed § 26.27(b) would also add requirements for the written FFD policy to be clear, concise, and readily available to all individuals who are subject to the policy because neither the current nor proposed rules require licensees and other entities to provide site-specific FFD training to individuals. However, FFD policies may vary between licensees and other entities with respect to, for example, the sanctions that are applied for confirmed non-negative test results, the cutoff levels used in drug or alcohol testing, or the time periods within which an individual who has been selected for random testing must report to the collection site. Under the proposed rule, the written FFD policy would continue to be the primary means by which a licensee or other entity would communicate local variations in FFD policy. In the past, however, a few individuals challenged determinations that they had violated a licensee's FFD policy on the basis that they were not aware of the specific provisions of the policy to which they were subject. Therefore, the proposed rule would add requirements that the FFD policy must be clear, concise, and readily available in order to promote individuals' awareness of the site-specific FFD policy to which they are subject. This proposed change would be made to meet Goal 7 of this rulemaking, as it relates to protecting the due process rights of individuals who are subject to Part 26.

The proposed rule would also add examples of acceptable methods to make the written policy ''readily available'' to individuals who are subject to the FFD policy, including, but not limited to, posting the policy in various work areas throughout the licensee's or other entity's facilities, providing individuals with brochures, or allowing individuals to print the policy from a computer. These examples would be added at the request of stakeholders during the public meetings discussed in Section V, and would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(b)(1) would amend the second sentence of current § 26.20(a), which requires that ''the policy must address the use of illegal drugs and abuse of legal drugs (*e.g.*, alcohol, prescription and over-the-counter drugs).'' Proposed § 26.27(b)(1) would expand this sentence to require the FFD policy to describe the consequences of on-site or off-site use, sale, or possession of illegal drugs in proposed § 26.27(b)(i); the abuse of legal drugs and alcohol in proposed § 26.27(b)(ii); and the misuse of prescription and over-the-counter drugs in proposed § 26.27(b)(iii). The proposed rule would replace the phrase, ''must address,'' in the current sentence with the phrase, ''must describe the consequences of,'' because stakeholders noted that ''must address'' is vague during the public meetings discussed in Section V. The phrase, ''must describe the consequences of,'' would clarify the information that the policy must convey to ensure that individuals who are subject to the policy are aware of the consequences of these actions, as specified in the licensee's or other entity's FFD policy. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

The proposed rule would add a new § 26.27(b)(2), which would require the FFD policy to state the time period

within which individuals must report to the collection site after being notified that they have been selected for random testing, as specified by the licensee or other entity. The proposed regulation would not establish a time limit because there are a variety of circumstances among the different entities who are subject to this rule that make it impractical to establish a universal time limit. However, adding the requirement for the licensee's or other entity's FFD policy to establish and convey a time limit would be necessary because some programs have not done so. As a result, circumstances have arisen in which individuals who were selected for random testing intentionally delayed reporting to the collection site in order to take steps to subvert the testing process, such as obtaining an adulterant to bring to the collection site or drinking large amounts of liquid to be able to provide a dilute specimen. Further, the longer that an individual who has abused illegal drugs or alcohol is able to delay providing specimens for testing, the more likely it is that the concentrations of an illegal drug or alcohol in the individual's urine, breath, or oral fluids will decrease due to metabolism, with the result that the concentrations may fall below the cutoff levels for those substances by the time the specimens are collected and the individual's substance abuse would not be detected. Therefore, the proposed rule would require licensees and other entities to establish a time limit within which individuals must report for random testing after they have been notified to improve the effectiveness of FFD programs, consistent with Goal 3 of this rulemaking. The proposed rule would also require the FFD policy to convey this time limit to ensure that individuals are aware of it, given that a failure to appear for testing within the prescribed time limit may lead to the imposition of sanctions under the FFD policy. This proposed change would be made to meet Goal 7 of this rulemaking, as it relates to protecting the due process rights of individuals who are subject to Part 26.

Proposed § 26.27(b)(3) would be added to require the FFD policy to inform individuals of the consequences of refusing to be tested and attempting to subvert the testing process. This provision would be added to ensure that persons who are subject to the rule are aware of proposed § 26.75(b), which would require licensees and other entities to impose the sanction of permanent denial of authorization for these actions. Proposed § 26.27(b)(3) would be added to protect the due process rights of individuals who are subject to drug and alcohol testing under this part by ensuring that they are informed, in advance, of the licensee's or other entity's policies to which they are subject. Therefore, adding this requirement would meet Goal 7 of this rulemaking with respect to protecting the due process rights of individuals who are subject to Part 26, as discussed in Section IV. B.

Proposed § 26.27(b)(4)(i) would amend current § 26.20(a)(1), which requires the FFD policy to prohibit the consumption of alcohol within an abstinence period of at least 5 hours preceding ''any scheduled working tour.'' The proposed rule would replace the phrase, ''any scheduled working tour,'' with the phrase, ''the individual's arrival at the licensee's or other entity's facility,'' as a result of stakeholder comments on the language in the current rule at the public meetings discussed in Section V. The stakeholders commented that the current phrase lacks clarity and could be misinterpreted as meaning, ''any working tour scheduled by the licensee or other entity.'' If the phrase was so interpreted, individuals who are subject to the rule may believe that, if they work on a weekend or work overtime that is not part of their normally scheduled working tour, the rule would permit them to consume alcohol within the 5-hour period before they arrive at work, which would be incorrect. Therefore, the language of the proposed rule would be revised to clarify that the pre-work abstinence period applies to the 5 hours before an individual arrives at the licensee's or other entity's facility for any purpose, except if an individual is called in to perform an unscheduled working tour, as discussed with respect to proposed § 26.27(c)(3). This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV.B.

Proposed § 26.27(b)(4)(ii) would retain current § 26.20(a)(2).

Proposed § 26.27(b)(5) would be added to require the FFD policy to inform individuals that abstinence from alcohol during the 5 hours preceding arrival at a licensee's or other entity's site, as required in proposed § 26.27(b)(4), may not be sufficient to ensure that an individual is fit for duty upon reporting to work. Some individuals who have complied with the 5-hour abstinence requirement could have BACs above the cutoff levels specified in proposed § 26.103 when they arrive at the licensee's or other entity's facility, depending upon the amount of alcohol and food that the individual consumed before the abstinence period began, body weight, and other factors. This proposed paragraph would be added to meet Goal 7 of this rulemaking with respect to protecting the due process rights of individuals who are subject to alcohol testing under Part 26 by ensuring that they are aware that the required 5-hour abstinence period may be insufficient to assure they have a BAC below the cutoff levels in this part when arriving for work.

Proposed § 26.27(b)(6) would amend the last sentence of current § 26.20(a), which requires the FFD policy to address other factors that could affect individuals' abilities to perform their duties safely and competently, such as mental stress, fatigue, and illness. The proposed provision would add a requirement for the FFD policy also to address the use of prescription and over-the-counter medications that could cause impairment at work. For example, some licensees or other entities may require individuals to self-report to the FFD program their use of any prescription medications that are labeled with a warning indicating that use of the medication may cause impairment. The licensee's or other entity's FFD policy may require that an individual who is taking a medication that can cause impairment must be temporarily re-assigned to job duties that the individual can perform without posing a risk to the individual or public health and safety while he or she is taking the medication. Therefore, the proposed rule would require licensees and other entities to include such information in the FFD policy to ensure that individuals are aware of the actions they may be required to take when using these substances, consistent with Goal 7 of this rulemaking with respect to protecting the due process rights of individuals who are subject to the policy. The addition of this requirement would also increase the internal consistency of the rule because other portions of the proposed (and current) rule establish requirements related to using prescription and over-the-counter medications, including, for example, proposed § 26.29(a)(6), which would require FFD training to address this topic, and proposed § 26.183(j)(2), which would require the MRO to determine whether a non-negative confirmatory drug test result that is due to using a prescription or over-the-counter medication represents substance abuse. Therefore, the proposed requirement for the FFD policy to address the use of prescription and over-the-counter medications that

could cause impairment at work would also meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(b)(7) would amend current § 26.20(b), which requires the FFD policy to describe programs that are available to individuals desiring assistance in dealing with drug, alcohol, or other problems that may adversely affect their performance of their job duties. Proposed § 26.27(b)(7) would add fatigue as one of the problems for which individuals may be seeking assistance because sleep disorders (*e.g.*, sleep apnea, insomnia, restless leg syndrome) can substantially affect individuals' abilities to obtain sufficient quality sleep. Poor quality sleep causes fatigue, which may degrade an individual's ability to safely and competently perform his or her duties. Sleep disorders affect a sizeable portion of the U.S. work force. According to polls conducted by the NSF about two-thirds of U.S. adults report experiencing one or more symptoms associated with insomnia, sleep apnea, or restless leg syndrome at least a few nights a week (National Sleep Foundation, 2003) and nearly one out of five (19 percent) report making occasional or frequent errors due to sleepiness (National Sleep Foundation, 2000). Proposed § 26.27(b)(7) would ensure that individuals are aware of the services that are available for diagnosing and treating sleep disorders that can adversely affect their job performance. This proposed change would be made to meet Goal 2 of this rulemaking, which is to strengthen the effectiveness of FFD programs at nuclear power plants by reducing the potential for worker fatigue to adversely affect public health and safety and the common defense and security, through establishing clear and more readily enforceable requirements concerning the management of worker fatigue. In addition, the proposed rule would replace the phrase, ''adversely affect the performance of activities within the scope of this part,'' in the current provision with the phrase, ''could adversely affect an individual's ability to safely and competently perform the job duties that require an individual to be subject to this part,'' for the reasons discussed with respect to proposed § 26.23(c).

Proposed § 26.27(b)(8) would retain the requirement in current § 26.20(d) that the FFD policy must specify the consequences of violating the policy. The current requirements in this paragraph that are related to the procedures that the licensee or other entity would implement if an individual violates the FFD policy would be moved to proposed § 26.27(c) [Procedures], which addresses FFD program procedures for organizational clarity.

Proposed § 26.27(b)(9) would add a requirement for licensees' and other entities' FFD policies to describe the individual's responsibility to report legal actions, as defined in proposed § 26.5 [Definitions]. The new requirement to report legal actions is discussed with respect to proposed § 26.61 [Self-disclosure and employment history]. However, the proposed rule would require the FFD policy to address the reporting of legal actions to ensure that individuals are aware of it and are not at risk of being subject to sanctions for failing to report any legal actions. This proposed change would be made to meet Goal 7 of this rulemaking with respect to protecting the due process rights of individuals who are subject to the policy, as discussed in Section IV.B.

Proposed § 26.27(b)(10) would add a requirement for the FFD policy to describe the responsibilities of managers, supervisors, and escorts to report FFD concerns. The current rule implies that managers and supervisors have the responsibility to report FFD concerns in § 26.22(a)(5), which requires managers and supervisors to be trained in procedures ''for initiating appropriate corrective action.'' Similarly, the last phrase of § 26.22(b) requires that escorts be trained in procedures ''for reporting problems to supervisory or security personnel,'' and, therefore, also implies that escorts have a reporting responsibility. However, the current rule does not explicitly state that the FFD policy must convey this requirement. Therefore, the proposed rule would add § 26.27(b)(10) to enhance the internal consistency of the rule. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(b)(11) would add a requirement for the FFD policy to state that individuals who are subject to the rule must report FFD concerns. The proposed provision would be added for consistency with proposed § 26.33 [Behavioral observation], which would require individuals who are subject to the rule to perform behavioral observation and to report an FFD concern if they detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, may constitute a risk to the health and safety of the public. Proposed § 26.29 [Training] would establish a requirement for all individuals who are subject to the rule to be trained in behavioral observation. As a group, these proposed requirements would be added to enhance the effectiveness of Part 26 in assuring the early detection of individuals who are not fit to perform the job duties that require them to be subject to this part, which is one of the performance objectives that FFD programs must meet, as discussed with respect to current § 26.10(b) and proposed § 26.23(c). The proposed provision would also be added to improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003, as discussed in Section IV.B. The specific requirement for licensees' and other entities' FFD policies to state that individuals must report FFD concerns in proposed § 26.27(b)(11) would be necessary to ensure that individuals are aware of their responsibility to report concerns (and that sanctions may be imposed if they do not) to meet Goal 7 of this rulemaking with respect to protecting the due process rights of individuals who are subject to the policy, as discussed in Section IV.B.

Proposed § 26.27(c) [Procedures] would combine the requirements related to procedures contained in current § 26.20(c)–(e), and would add other requirements, as follows:

Proposed § 26.27(c)(1) would retain the requirements in current § 26.20(c). The phrase, ''privacy and due process rights of an individual,'' would be added to clarify the requirement for ''protecting the employee,'' contained in current § 26.20(c). For example, individuals' privacy rights under the proposed rule include, but are not limited to, requirements for the protection of personal information that is collected about the individual and individual privacy during specimen collections. Examples of individuals' rights to due process under the proposed rule include, but are not limited to, the right to an objective and impartial review of a determination that the individual has violated the FFD policy, the right to advance knowledge of rule provisions and FFD policy requirements that affect the individual, and the right to request testing of a split specimen or retesting an aliquot of a single specimen, if the individual questions a confirmed non-negative test result. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(c)(2)(i) and (c)(2)(ii) would divide current § 26.20(d) into separate paragraphs that address different topics. Proposed § 26.27(c)(2)(i) would retain the requirement for licensees and other entities to have procedures that specify the immediate and followup actions that must be taken if an individual is determined to have been involved in the use, sale, or possession of illegal drugs. Proposed § 26.27(c)(2)(ii) would continue to require licensees' and other entities' procedures to specify the immediate and followup actions to be taken if an individual is determined to have consumed alcohol to excess before the mandatory pre-work abstinence period, during the mandatory pre-work abstinence period, or while on duty, as determined by a test that measures BAC. The proposed rule would divide the current paragraph into two paragraphs to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(c)(2)(iii) and (c)(2)(iv) would require that licensees and other entities who are subject to the rule must prepare written procedures for implementing the FFD program that address followup actions for attempted subversion of the testing process. Proposed § 26.27(c)(2)(iii) would require procedures to specify immediate and followup actions if an individual has attempted to subvert the testing process by adulterating, substituting, or diluting specimens (in vivo or in vitro), or by any other means. Proposed § 26.27(c)(2)(iv) would require procedures to address the actions to be taken if an individual has refused to provide a specimen for testing. The proposed rule would add these provisions for consistency with proposed § 26.75(b), which would require licensees and other entities to terminate an individual's authorization and, thereafter, permanently deny authorization to any individual who has committed any act or attempted act to subvert the testing process, including refusing to provide a specimen and providing or attempting to provide a substituted or adulterated specimen, for any test required under this part. Adding the proposed requirements for procedures to address these circumstances would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(c)(2)(v) would require that the written procedures must address immediate and followup actions for individuals who have had drug- or alcohol-related legal actions taken against them, as defined in proposed § 26.5 [Definitions]. The proposed paragraph would support related provisions in proposed § 26.69(d) [Maintaining authorization with other potentially disqualifying FFD information], which, in general, require licensees and other entities to take certain steps if an individual has had drug- or alcohol-related legal actions taken against them while they are maintaining authorization to perform the job duties that require them to be subject to this part. Adding the proposed requirement for procedures to address these circumstances would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, and ensure the internal consistency of the proposed rule.

Proposed § 26.27(c)(3) would amend current § 26.20(e). The proposed paragraph would continue to require licensees and other entities to have procedures to describe the process that the licensee or other entity will use to ensure that individuals who are called in to perform an unscheduled working tour are fit for duty. The proposed paragraph would also retain the requirement in the last sentence of current § 26.20(e)(3) that consumption of alcohol within the 5-hour pre-duty abstinence period may not by itself preclude a licensee or other entity from using individuals who are needed to respond to an emergency. However, this sentence would be moved from the end of the last sentence in the current paragraph to the introductory paragraph of proposed § 26.27(c)(3) because it applies generally to the topic of this proposed paragraph, rather than only to the topic addressed in current § 26.20(e)(3). This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, as discussed in Section IV. B.

The proposed rule also would retain the other requirements of current § 26.20(e), as follows: Proposed § 26.27(c)(3)(i) would retain current § 26.20(e)(1), which requires the individual who is called in to state whether the individual considers himself or herself fit for duty and whether he or she has consumed alcohol within the pre-duty abstinence period stated in the FFD policy. Proposed § 26.27(c)(3)(ii)(A) and (c)(3)(ii)(B) would retain current § 26.20(e)(2) and the first sentence of current § 26.20(e)(3), which require that an individual who reports that he or she has used alcohol and is called in must be subject to alcohol testing, and that the licensee or other entity must establish controls and conditions under which an individual who has consumed alcohol may perform work safely.

The proposed rule would also add a requirement to proposed § 26.27(c)(3)(i) and (c)(3)(iii). The proposed rule would require an individual who is called in to state whether he or she considers himself or herself to be fit for duty, in addition to stating whether he or she has consumed alcohol. The proposed rule would add this requirement to recognize that there are conditions other than the consumption of alcohol that may cause an individual to be unable to safely and competently perform duties, including, but not limited to, fatigue (as discussed with respect to Subpart I [Managing Fatigue]). Therefore, requiring individuals to report other conditions that may cause them to be impaired when called in to perform an unscheduled working tour, under proposed § 26.27(c)(3)(i), would strengthen the effectiveness of FFD programs by providing the licensee or other entity with more complete information about the individual's condition to determine whether there is a need to establish controls and conditions under which the individual may safely perform work, as required under proposed § 26.27(c)(3)(iii). These proposed changes would be made to meet Goal 3 of this rulemaking, which is improve the effectiveness and efficiency of FFD programs.

Proposed § 26.27(c)(3)(ii)(C) would be added to clarify that licensees and other entities may not impose sanctions if an individual is called in for an unscheduled working tour and has consumed alcohol during the pre-duty abstinence period specified in the FFD policy. During the public meetings discussed in Section V, the stakeholders requested this clarification to ensure that, if an individual who is called in unexpectedly has a confirmed positive test result for alcohol, he or she would not be subject to the sanctions that are otherwise required under this part for a confirmed positive alcohol test result. The NRC concurs with this recommendation because sanctions for the consumption of alcohol in these circumstances would be inappropriate, given that the individual would have been unaware that he or she would be called in to work. The proposed revision also would be consistent with the original intent of the rule. Therefore, the proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.27(c)(4) would be added to require that FFD procedures must describe the process to be followed when another individual's behavior

raises an FFD concern and for reporting the concern. As discussed with respect to proposed § 26.27(b)(11), this proposed paragraph would be added for consistency with proposed § 26.33 [Behavioral observation], which would establish a new requirement that all individuals who are subject to the rule must perform behavioral observation and report any FFD concerns, and proposed § 26.29 [Training], which requires that individuals who are subject to this part must be trained to perform behavioral observation. The proposed requirement would be added to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs, and Goal 4, which is to improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

Proposed § 26.27(d) would retain the requirements of current § 26.20(f).

Section 26.29 Training

Proposed § 26.29 [Training] would combine and amend current § 26.21 [Policy communications and awareness training] and § 26.22 [Training of supervisors and escorts]. The proposed section would require that all individuals who are subject to the rule must receive the same training, to include, for example, behavioral observation, whereas current § 26.22 requires that only supervisors and escorts must receive behavioral observation training. Increasing the number of individuals who are trained in behavioral observation would enhance the effectiveness of FFD programs by increasing the likelihood of detecting potential impairment, consistent with Goal 3 of this rulemaking, as discussed in Section IV.B.

Proposed § 26.29(a) [Training content] would combine the training topics listed in current §§ 26.21(a)(1)–(a)(5), 26.22(a)(1)–(a)(5), and 26.22(b). The required training topics would be rewritten in terms of knowledge and abilities (KAs) to be consistent with terminology used by licensees and other entities in other required training programs to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.29(a)(1) would combine current § 26.21(a)(1) with the latter portion of current § 26.21(a)(5). Consistent with the current training requirements, the proposed paragraph would require licensees and other entities to ensure that individuals who are subject to the FFD policy have knowledge of the FFD policy and procedures that apply to them, the methods used to implement the policy and procedures, and the consequences of violating the policy and procedures.

Proposed § 26.29(a)(2) would retain the requirement in current § 26.22(a)(1) that licensees and other entities who are subject to the rule must ensure that individuals understand their roles and responsibilities under the FFD program, such as avoiding substance abuse and reporting for testing within the time limit specified in FFD program procedures.

Proposed § 26.29(a)(3) would amend the terminology used in current § 26.22(a)(2), which requires FFD training to address the roles and responsibilities of others, such as the personnel, medical, and employee assistance program (EAP) staffs. The proposed paragraph would replace the references to the ''personnel'' function and ''medical'' staff in current § 26.22(a)(2) with ''human resources'' and ''FFD'' staff, respectively. The proposed rule would also move the reference to the MRO into this paragraph from current § 26.21(a)(3). These proposed changes would be made to update the terminology in this paragraph to be consistent with other terms used throughout the regulation to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.29(a)(4) and (a)(5) would amend current § 26.21(a)(4) and (a)(2), respectively, by changing some of the language used in the current provisions. Current § 26.29(a)(4) requires FFD training to inform individuals who are subject to the rule of any EAPs that are available to them. The proposed rule would eliminate the reference to EAPs ''provided by the licensee'' in the current provision and amend it as ''EAP services available to the individual'' because there are other entities who would be subject to this requirement under the proposed rule. Proposed § 26.29(a)(5) would amend current § 26.21(a)(2) by replacing the phrase, ''abuse of drugs and misuse of alcohol,'' with ''abuse of illegal and legal drugs and alcohol'' for greater accuracy in describing the required knowledge. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.29(a)(6) would retain the portion of current § 26.21(a)(3) which requires licensees to ensure that individuals understand the effects of prescription and over-the-counter drugs and dietary factors on job performance. The proposed rule would add a requirement for FFD training to address the effects of illness, mental stress, and fatigue on job performance, in order to ensure that individuals understand the bases for the licensee's or other entity's FFD policy regarding these conditions. The requirement in the last sentence of current § 26.20(a) for the FFD policy to address these factors would be moved to proposed § 26.27(b)(6) because proposed § 26.27(b) would address FFD policy requirements. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.29(a)(7) would retain the portion of current § 26.21(a)(3) that requires licensees and other entities to ensure that individuals who are subject to the rule understand the effects of prescription and over-the-counter drugs and dietary factors on drug and alcohol test results. Examples of medications, supplements, and dietary factors that can affect drug and alcohol test results may include, but are not limited to, ingesting foods containing poppy seeds, drinking coca tea, using some liquid or inhalant cold and cough preparations containing alcohol or codeine, and taking supplements containing hemp oil.

Proposed § 26.29(a)(8) and (a)(9) would retain the requirements in current § 26.22(a)(3) and (a)(4), respectively.

Proposed § 26.29(a)(10) would amend current § 26.22(a)(5). The proposed provision would retain the current requirement for FFD training to address the licensee's or other entity's process for initiating appropriate corrective action if an individual has an FFD concern about another person, to include referral to the EAP. The proposed rule would add a requirement for FFD training to ensure that individuals understand their responsibility to report FFD concerns to the person(s) who are designated in FFD program procedures to receive such reports. This proposed change would be made for consistency with proposed § 26.33 [Behavioral observation], which would require individuals to perform behavioral observation and report any FFD concerns, as discussed with respect to proposed § 26.27(b)(11), and proposed § 26.27(c)(4), which would require procedures for implementing the requirement. This group of inter-related proposed requirements would be added to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs, and Goal 4 of this rulemaking, which is to improve consistency between FFD

requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

A new § 26.29(b) [Comprehensive examination] would require that individuals who are subject to the FFD program must demonstrate attainment of the KAs specified in proposed § 26.29(a) by passing a comprehensive examination. This new requirement would be added because there have been several instances since Part 26 was first promulgated in which individuals were able to overturn determinations that they had violated a licensee's FFD policy on the basis that they had not understood the information they received during FFD training and so could not be expected to comply with the requirements of the policy. Therefore, the proposed rule would require individuals to demonstrate their attainment of the KAs listed in proposed § 26.29(a) to ensure that the FFD training has been effective. The proposed rule would also require remedial training for those who fail to achieve a passing score on the examination. Proposed § 26.29(b) would require the examination to include at least one question for each KA, and establish a minimum passing score of 80 percent. These proposed requirements would be modeled on other required training programs that have been successful in ensuring that examinations are valid and individuals have achieved an adequate understanding of the subject matter. The proposed paragraph would be added to meet the portion of Goal 3 of this rulemaking that relates to improving the effectiveness of FFD programs by establishing a method to ensure that individuals understand the requirements with which they must comply.

The proposed paragraph also would permit the use of various media for administering the comprehensive examination, in order to achieve the efficiencies associated with computer-based training and testing, for example, and other new training delivery technologies that may become available. Permitting the use of various media to administer the examination would meet the portion of Goal 3 of this rulemaking that relates to improving the efficiency of FFD programs. The proposed permission would also meet Goal 5, which is to improve Part 26 by eliminating or modifying unnecessary requirements, by providing flexibility in the methods that licensees and other entities may use to administer the required examination.

Proposed § 26.29(c) [Training administration] would combine and amend the portions of current § 26.21(b) and § 26.22(c) that require FFD training for individuals, supervisors, and escorts before they are permitted to perform duties that require them to be subject to this part.

Proposed § 26.29(c)(1) would require that all personnel who are subject to this part must complete FFD training before the licensee or other entity grants initial authorization to the individual, as defined in proposed § 26.55 [Initial authorization]. The proposed rule would also require that an individual's training must be current before the licensee or other entity grants an authorization update or reinstatement to the individual, as defined in proposed § 26.57 [Authorization update] and § 26.59 [Authorization reinstatement], respectively. The proposed paragraph also would eliminate the requirement to upgrade training for newly assigned supervisors within 3 months of a supervisory assignment in current § 26.22(c), because all personnel would receive the same training and be required to complete the training before a licensee or other entity grants authorization to any individual. The proposed changes would be made for consistency with the new requirements related to granting and maintaining authorization that would be established in proposed Subpart C [Granting and Maintaining Authorization], as discussed with respect to that subpart.

Proposed § 26.29(c)(2) would retain but combine the requirements for annual refresher training in current § 26.21(b), which addresses individuals who are subject to this part, and § 26.22(c), which addresses supervisors and escorts. The current requirements would be combined because all personnel would receive the same training under the proposed rule. The proposed paragraph would also permit individuals who pass a comprehensive ''challenge'' examination that demonstrates their continued understanding of the FFD program requirements to be excused from the refresher training that would otherwise be required under the proposed paragraph. The challenge examination would be required to meet the examination requirements specified in proposed § 26.29(b) [Comprehensive examination] and individuals who did not pass would undergo remedial training. Permitting individuals to pass a comprehension examination rather than take refresher training each year would ensure that they are retaining their FFD knowledge and abilities while reducing some costs associated with meeting the annual refresher training requirement. Therefore, this proposed change would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.29(c)(3) would permit licensees and other entities to use various media, in addition to traditional classroom instruction, for presenting initial and refresher training for the same reasons discussed with respect to the portion of proposed § 26.29(b) [Comprehensive examination] that would permit licensees and other entities to use various media to administer the comprehensive examination. The proposed requirements for a licensee or other entity to monitor the completion of training and provide access to an instructor or subject matter expert should ensure that individuals who are trained using different media would achieve the same understanding as persons who are trained in a classroom setting with an instructor present. This proposed flexibility may reduce the costs associated with presenting initial and refresher training only in a classroom setting. Therefore, this proposed change would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

To meet the annual refresher training requirement for individuals, proposed § 26.29(d) [Acceptance of training] would permit licensees and other entities to accept FFD training that was provided by other licensees and entities who are subject to the rule. Licensees and other entities would also be permitted to accept a passing result from a comprehensive examination that was administered by another Part 26 FFD program in lieu of refresher training, if the examination meets the requirements of proposed § 26.29(b) [Comprehensive examination]. Proposed § 26.29(c)(4) would incorporate item 3.3 of NUREG–1385, ''Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions,'' which recommends acceptance of prior training. The proposed provision would also meet Goal 4 of this rulemaking, which is to improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003. These access authorization requirements also permit licensees and other entities to rely on training and examinations administered by other Part 26 programs.

Section 26.31 Drug and Alcohol Testing

Proposed § 26.31 [Drug and alcohol testing] would rename current § 26.24 [Chemical and alcohol testing]. The proposed rule, in general, would replace the phrase, ''chemical testing,'' with the term, ''drug testing,'' because the testing for chemicals that is required in the rule is performed only in the context of urine drug testing. Therefore, the term, ''drug testing,'' more accurately conveys the nature of the testing that is performed. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(a) [General] would retain but update the language in current § 26.24(a) to be consistent with the new terminology used throughout the rule, as discussed in proposed § 26.5 [Definitions]. For example, the proposed rule would replace ''licensee'' with ''licensees and other entities'' to refer to the entities who are subject to the rule. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.31(b) [Assuring the honesty and integrity of FFD program personnel] would amend current Section 2.3 in Appendix A to Part 26, as explained below.

Proposed § 26.31(b)(1) would amend the first paragraph of current Section 2.3 in Appendix A to Part 26, which requires licensees to carefully select and monitor persons responsible for administering the testing program to assure they meet the highest standards of honesty and integrity. The proposed rule would replace the current list of individuals who would be subject to this requirement with a cross-reference to § 26.25(a)(4) of the proposed rule, which specifies, in detail, the FFD program personnel who must be subject to the FFD program. This cross-reference would be added to avoid repeating the list of personnel in this paragraph.

The proposed paragraph would also add a reference to factors, other than a personal relationship with an individual who is subject to testing, that have the potential to cause an individual to be subject to influence attempts or may adversely affect the honesty and integrity of FFD program personnel. In addition to a personal relationship with an individual who is subject to testing, factors that could cause an individual to be compromised may include, but would not be limited to, a substance abuse problem [as discussed with respect to proposed § 26.25(a)(4)] or financial problems. Therefore, the proposed rule would add a reference to these additional factors to more accurately characterize the scope of potential concerns that licensees and other entities must consider when selecting and monitoring the honesty and integrity of FFD program personnel. The proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.31(b)(1)(i) would amend current Section 2.3(2) in Appendix A to Part 26 in response to implementation questions regarding the current requirements that the NRC staff has received since Part 26 was first promulgated as well as discussions with stakeholders during the public meetings discussed in Section V. In response to numerous questions from licensees, the proposed paragraph would clarify that the background investigations, credit and criminal history checks, and psychological evaluations that are required for persons who are granted unescorted access to protected areas in nuclear power plants are acceptable when determining the honesty and integrity of FFD program personnel. The proposed rule would retain the term, ''appropriate,'' in the current rule for two reasons. First, it would be used to indicate that, for FFD program personnel who are employed by entities who are subject to the rule but are not nuclear power plants, the requirements may be met through investigations, checks, and evaluations that provide the information needed to determine the honesty and integrity of FFD program personnel but may differ from those required under nuclear power plant access authorization programs. In addition, the proposed rule would retain the term, ''appropriate,'' because it has particular relevance to the requirement for licensees and other entities to conduct criminal history checks for FFD program personnel. In some cases, licensees and other entities cannot legally obtain the same type of criminal history information about FFD program personnel as they are able to obtain for other individuals who are subject to Part 26. Therefore, the term, ''appropriate,'' would be used to indicate that local criminal history checks for FFD program personnel who do not have unescorted access to nuclear power plant protected areas are acceptable. These proposed changes would be made to meet the portion of Goal 6 of this rulemaking that pertains to improving clarity in the language of the rule.

The requirement in current Section 2.3(2) in Appendix A to Part 26 for ''appropriate background checks and psychological evaluations'' to be ''conducted at least once every three years'' would be relaxed to require that credit and criminal history checks and updated psychological assessments be conducted nominally every 5 years. The proposed rule would relax the current requirement for several reasons. First, the NRC is not aware of any instances in which licensees and other entities have identified new information about FFD program personnel from updating the background checks and psychological assessments that had not already been identified through other avenues, including self-reports by FFD program personnel, drug and alcohol testing, and behavioral observation. However, the NRC continues to believe that the required updates provide an independent method to verify the ongoing honesty and integrity of FFD program personnel that is necessary because of the critical importance of FFD program personnel in assuring program effectiveness. Therefore, the proposed rule would retain the current requirement for updated background checks and psychological assessments but would reduce the required frequency of these updates from every 3 years to every 5 years. This proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements. In addition, the proposed frequency for these updates would increase the consistency of Part 26 with access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003, which is Goal 4 of this rulemaking.

Proposed § 26.31(b)(1)(ii) would amend current Section 2.3(1) in Appendix A to Part 26 for clarification in response to the many implementation questions that have arisen since the regulation was published. In the current rule, individuals who have a personal relationship with the individual being tested (i.e., a donor), such as the donor's ''supervisors, coworkers, and relatives,'' are prohibited from performing any ''collection, assessment, or evaluation procedures'' involving the individual being tested. The restriction on ''supervisors, coworkers, and relatives'' was included in the current rule to provide examples of the ''personal relationships'' referenced in the introductory paragraph of current Section 2.3 in Appendix A to Part 26. The restriction on coworkers in the current rule has been misinterpreted by some licensees as meaning that no one

who is an employee of the same corporation may be involved in collection, assessment, or evaluation procedures. However, in a large corporation, there will be many individuals who are employed by the same corporation who do not have personal relationships with FFD program personnel, specifically, or with other individuals who are subject to testing, in general. Therefore, in proposed § 26.31(b)(1)(ii), the phrase, ''in the same work group,'' would be added to clarify that the example regarding coworkers pertains to individuals who report to the same manager. For example, FFD program personnel report to the FFD program manager and so would be considered ''coworkers in the same work group'' to whom the proposed restriction would apply. In addition, the proposed paragraph would add a reference to determinations of fitness (discussed with respect to proposed § 26.189 [Determination of fitness]) to provide a clarifying example of the assessment and evaluation procedures that FFD program personnel would be prohibited from performing if the FFD program staff member has a personal relationship with the subject individual. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(b)(1)(iii) would relax the prohibition on individuals who have ''personal relationships'' with the donor from performing specimen collection procedures in current Section 2.3(1) in Appendix A to Part 26 in response to stakeholder requests during the public meetings discussed in Section V. With respect to specimen collections, stakeholders were convincing that the current restriction imposes an unnecessary burden when the objective of ensuring the integrity of specimen collections in these circumstances could be achieved by other means. Therefore, in proposed § 26.31(b)(1)(iii), individuals who have a personal relationship with a donor would be permitted to collect specimens, if the collection and preparation of the specimens for shipping is monitored by another individual who does not have a personal relationship with the donor and is not a supervisor, a coworker in the same work group, or a relative of the donor. The proposed rule would require that the independent individual who is designated to monitor the collection must be trained to monitor specimen collections. The proposed paragraph would also provide examples of the types of individuals who may monitor the integrity of specimen collection procedures in these circumstances, including but not limited to, security force or quality assurance personnel. This proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements, by permitting monitored collections in these circumstances while continuing to assure the integrity of specimen collections from FFD program personnel. The proposed rule would retain the prohibition on individuals who have personal relationships with the donor from performing assessment and evaluation procedures because monitoring of these activities by qualified, independent personnel would not be feasible.

Proposed § 26.31(b)(1)(iv) would be added to prohibit a collector who has a personal relationship with the donor from acting as a urine collector under monitoring, if a directly observed collection is required. This proposed prohibition would be necessary to minimize embarrassment to the donor (and the collector) during a directly observed collection. The proposed paragraph would be added to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.31(b)(1)(v) would amend current Section 2.3(3) in Appendix A to Part 26 to require that MROs who are on site at a licensee's or other entity's facility must be subject to behavioral observation. For the purposes of the proposed paragraph, a ''facility'' would include, but is not limited to, a licensee's or other entity's corporate offices and any medical facilities that are operated by the licensee or other entity. The proposed requirement would be added because MROs are ''persons responsible for administering the testing program,'' but some FFD programs have not included MROs in the behavioral observation element of their programs. However, the proposed rule would limit the behavioral observation of MROs to those times when they are on site at a licensee's or other entity's facility, in order to permit licensees and other entities to continue relying on the services of MROs who normally work independently, often alone, in offices at a geographical distance from the licensee's or other entity's facilities so that behavioral observation is impractical. Limiting the proposed requirement for behavioral observation of MROs to those instances in which the MRO is working at a licensee's or other entity's facility would be adequate to assure the continuing honesty and integrity of these MROs because MROs who work off site would not be interacting on a daily basis with other individuals who are subject to the FFD program. Therefore, off-site MROs would be less likely to be subject to potential influence attempts than MROs who normally work on site because they are generally inaccessible. Further, the proposed rule would continue to require all MROs to be subject to the other FFD program elements that are required in this proposed Subpart, including drug and alcohol testing and regular psychological assessments and background investigations, which would permit licensees and other entities to monitor off-site MROs' honesty and integrity. This proposed relaxation would be added to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.31(b)(2) would provide another relaxation related to collecting specimens from FFD program personnel. The proposed paragraph would permit FFD program personnel to submit specimens for testing at collection sites that meet the requirements of 49 CFR Part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs'' (65 FR 41944; August 9, 2001). As discussed with respect to proposed § 26.31(b)(1), some FFD program personnel, such as contract MROs and EAP staff members, normally work at locations that are so distant from a licensee's collection site(s) as to make it impractical for them to be randomly tested at a licensee's or other entity's collection site. Permitting these FFD program personnel to be tested at local collection sites that follow similar procedures would be adequate to meet the goal of ensuring their continuing honesty and integrity. Therefore, the proposed paragraph would be added to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.31(c) [Conditions for testing] would replace current § 26.24(a)(1)-(a)(4). The proposed paragraph would list the situations in which testing is required in separate paragraphs, such as ''pre-access,'' ''for cause,'' and ''post-event'' testing, to clarify that each situation for which testing is required stands on its own. The current provision in § 26.24(a)(3), in particular, has led to confusion and misinterpretation of the regulations, to be corrected as noted below. Specific requirements for conducting the testing would be addressed in proposed Subparts E [Collecting Specimens for

Testing], F [Licensee Testing Facilities], and G [Laboratories Certified by the Department of Health and Human Services]. The proposed rule would reorganize and amend current § 26.24(a)(1)-(a)(4) to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(c)(1) [Pre-access] would amend current § 26.24(a)(1), which requires pre-access testing within 60 days before the initial granting of unescorted access to protected areas or assignment to job duties within the scope of this part. The proposed paragraph would introduce the concepts of ''initial authorization,'' ''authorization update,'' and ''authorization reinstatement,'' which refer to categories of requirements that licensees and other entities must meet in order to assign an individual to job duties which require the individual to be subject to Part 26. Section 26.65 [Pre-access drug and alcohol testing] in Subpart C [Granting and Maintaining Authorization] of the proposed rule would specify detailed requirements for conducting pre-access testing.

Proposed § 26.31(c)(2) [For cause] and § 26.31(c)(3) [Post event] would clarify and amend current § 26.24(a)(3), as follows:

Proposed § 26.31(c)(2) [For cause] would continue to require for-cause testing in response to any observed behavior or physical condition indicating possible substance abuse. The proposed rule would also retain the current requirement for testing if the licensee or other entity receives credible information that an individual is engaging in substance abuse. The term, ''substance abuse,'' would be defined in proposed § 26.3 [Definitions].

Proposed § 26.31(c)(3) [Post event] would amend the portion of current § 26.24(a)(3) that requires drug and alcohol testing when an event involving a failure in individual performance leads to significant consequences. The proposed rule would amend the current provision because it has been subject to misinterpretation and numerous questions from licensees.

The phrase, ''if there is reasonable suspicion that the worker's behavior contributed to the event,'' in current § 26.24(a)(3) has been subject to misinterpretation. The location of this phrase at the end of the list of conditions under which post-event testing must be performed has led some licensees to conclude that this phrase applies only to events involving actual or potential substantial degradations of the level of safety of the plant. Other licensees have misinterpreted the term, ''reasonable suspicion'' as meaning, ''reasonable suspicion of substance abuse,'' or some other ''illegal'' or ''disreputable'' activity. Neither of these interpretations is consistent the intent of this paragraph. Therefore, to clarify the intent of the provision, the proposed rule would eliminate the phrase, ''if there is reasonable suspicion that the worker's behavior contributed to the event,'' from the end of the list of significant events that require post-event testing and, instead, require post-event testing as soon as practical after significant events [as listed in proposed § 26.31(c)(3)(i)-(c)(3)(iii)] involving a human error that may have caused or contributed to the event. The proposed rule would use the term, ''human error,'' rather than the current term, ''worker's behavior,'' to emphasize that post-event testing would be required for acts that unintentionally deviated from what was planned or expected in a given task environment (NUREG/CR–6751, ''The Human Performance Evaluation Process: A Resource for Reviewing the Identification and Resolution of Human Performance Problems'') as well as failures to act (i.e., errors of omission). Therefore, testing would be required regardless of whether there was ''reasonable suspicion'' that the individual was abusing drugs or alcohol for the consequences listed in the proposed paragraph.

In addition, the second sentence of proposed § 26.31(c)(3) would be added in response to stakeholder comments at the public meetings discussed in Section V. The stakeholders noted that the current provision does not clearly delineate the scope of individuals who must be subject to post-event testing. Some licensees have misinterpreted the current provision as requiring that all individuals who are involved in a significant event must be tested, including individuals whose behavior played no causal or contributing role in the event. For example, these licensees' FFD programs would require that an individual who was exposed to radiation in excess of regulatory limits must be tested, even if other individuals' actions (or failures to act) were responsible for the event and the individual who suffered the exposure was a bystander. Therefore, the second sentence of the proposed provision would clarify the original intent of this paragraph by stating that only the individual(s) who committed the error(s) would be subject to post-event testing.

Proposed § 26.31(c)(3)(i) would provide a threshold for the types of workplace personal injuries and illnesses for which post-event testing would be required in response to implementation questions related to current § 26.24(a)(3). Some licensees have misinterpreted the current provision as requiring post-event testing for any personal injury, no matter how minor. The proposed paragraph would clarify the type of personal injuries and illnesses for which post-event testing would be required by establishing a threshold that is based on the general criteria contained in 29 CFR 1904.7 of the regulations of the Occupational Safety and Health Administration (OSHA) for recording occupational injuries and illnesses. As defined in the OSHA standard and the proposed rule, these would include any injuries and illnesses which result in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant injury or illness as diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. The proposed rule would add this clarification to reduce the number of unnecessary post-event tests performed for minor injuries and illnesses and meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

In response to stakeholder comments at the public meetings discussed in Section V, proposed § 26.31(c)(3)(i) would also include the qualifying phrase, ''within 4 hours after the event,'' with reference to the recordable personal injuries and illnesses that would trigger post-event testing. The stakeholders noted that, in some cases, it is difficult to detect illnesses and injuries that meet the proposed threshold for post-event testing at the time they occur. For example, if an individual has been injured on site but does not report the injury to the licensee or other entity and waits for several days to seek treatment from his or her private physician, the licensee or other entity may not learn of the injury. The extent of an injury may be unclear at the time it occurs and so it may appear to fall below the threshold for post-event testing until several days have passed. In these examples, if the licensee or other entity learns after several days that the injury would have met the threshold for post-event testing, it would be too late for post-event testing to be of any value in determining whether the individual's use of drugs or alcohol may have contributed to the event. If alcohol

or drug use had contributed to the event, testing several days later would be unlikely to detect it because of the effects of metabolism. Further, it would be difficult to prove that any non-negative test results reflected the individual's condition at the time the event occurred rather than subsequent drug or alcohol use. Therefore, the proposed rule would limit post-event testing to situations in which the licensee or other entity can determine that an injury or illness meets the proposed threshold within 4 hours after the event has occurred, and can conduct the testing within a time frame that will provide useful information about the individual's condition at the time of the event. However, the proposed paragraph should not be misinterpreted as requiring post-event testing to be completed within 4 hours after the event. The time period after the event within which testing must be completed would be defined in proposed § 26.31(c)(3) as ''as soon as practical.'' This proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Proposed § 26.31(c)(3)(ii) would carry over the relevant language in the corresponding portion of current § 26.24(a)(3), without change.

Proposed § 26.31(c)(3)(iii) would carry over the relevant language in the corresponding portion of current § 26.24(a)(3), but, as discussed with respect to proposed § 26.31(c)(3), would eliminate the current qualifying phrase, ''if there is reasonable suspicion that the worker's behavior contributed to the event.''

Proposed § 26.31(c)(4) [Followup] would retain the intent of current § 26.24(a)(4) but amend its language. The proposed rule would eliminate the phrase, ''to verify continued abstention from the use of substances covered under this part,'' because it could be misinterpreted as limiting the substances for which followup testing would be permitted to only those listed in proposed § 26.31(d)(1) [Substances tested]. The proposed rule would revise this phrase as, ''to verify continued abstinence from substance abuse,'' to clarify that FFD programs would be permitted to conduct followup testing for any substances an individual may have abused, subject to certain additional requirements discussed with respect to proposed § 26.31(d)(1)(i). Detailed requirements for conducting followup testing would be established in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information], where they would apply to licensees' and other entities' processes for granting and maintaining authorization. The proposed rule would make these changes to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(c)(5) [Random] would simplify current § 26.24(a)(2) to define random testing as one of the conditions under which testing is required. The detailed requirements for implementing random testing that are contained in current § 26.24(a)(2) would be moved to proposed § 26.31(d) [General requirements for drug and alcohol testing]. The proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(d) [General requirements for drug and alcohol testing] would be added to better organize requirements related to the general administration of drug and alcohol testing. The proposed rule would present more detailed requirements for conducting drug and alcohol testing in proposed Subparts E [Collecting Specimens for Testing], F [Licensee Testing Facilities], and G [Laboratories Certified by the Department of Health and Human Services]. The proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(d)(1) [Substances tested] would retain the list of drugs for which testing must be conducted in current Section 2.1(a) in Appendix A to Part 26, but would clarify that, for some drugs, the testing is conducted to detect drug metabolites. The circumstances in which testing for these substances must be performed (*i.e.*, pre-access, post-event, random) would be moved to proposed § 26.31(c) for organizational clarity. In addition, the proposed paragraph would add adulterants to the list of substances for which testing must be conducted, consistent with the addition of specimen validity testing requirements to the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.31(d)(1)(i) would retain the permission in the second sentence of current § 26.24(c) for licensees and other entities to consult with local law enforcement agencies or other sources of information to identify drugs that may be abused by individuals in the geographical locale of the FFD program.

Proposed § 26.31(d)(1)(i)(A) would retain the permission in current § 26.24(c) for licensees and other entities to add to the panel of drugs for which testing is required in proposed § 26.31(d)(1). Additional drugs may include, but are not limited to, ''designer drugs,'' such as ecstasy or ketamine, and illegal drugs that are popular in some geographical areas, such as lysergic acid diethylamide-25 (LSD). The proposed paragraph would also require that any additional drugs must be listed on Schedules I–V of section 202 of the Controlled Substances Act [21 U.S.C. 812], which would be consistent with the definition of ''illegal drugs'' in current § 26.3 [Definitions].

Proposed § 26.31(d)(1)(i)(B) would retain the last sentence in current § 26.24(c), which requires licensees and other entities who are subject to the rule to establish appropriate cutoff levels for any additional substances for which testing will be conducted.

Proposed § 26.31(d)(1)(i)(C) would retain the requirement in current Section 2.1(c) in Appendix A to Part 26, which requires licensees and other entities to establish rigorous testing procedures for any additional drugs.

Proposed § 26.31(d)(1)(i)(D) would be added to further clarify the requirement in proposed § 26.31(d)(1)(i)(C) for ''rigorous testing procedures'' and would replace the portion of current Section 1.1(2) in Appendix A to Part 26 that requires licensees to obtain written approval from the NRC to test for additional drugs. The purpose of the current requirement is to provide an opportunity for the NRC to verify that the assays and cutoff levels licensees use in testing for additional drugs are scientifically sound and legally defensible. However, the current requirement also imposes a reporting burden. The proposed provision would eliminate this reporting requirement and replace it with requirements for an independent forensic toxicologist to conduct the review that the NRC currently performs. The proposed rule would require the independent forensic toxicologist to certify, in advance and in writing, that the assay to be used in testing for any additional drugs or drug metabolites, and the cutoff levels to be applied, are scientifically sound and legally defensible. The proposed paragraph would also specify the required qualifications for the forensic toxicologist. Certification of the assay and cutoff levels would not be required in two circumstances: (1) If the HHS Guidelines are revised to permit use of the assay and the cutoff levels in Federal workplace drug testing programs, and (2) if the licensee or other entity has received written approval from the NRC to test for the additional drugs or metabolites and to apply the cutoff levels to be used in testing for the

additional drugs or metabolites, as required in current Section 1.1(2) in Appendix A to Part 26. Certification would be unnecessary in these two circumstances because it would be redundant. This proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements, while continuing to ensure that any drug testing conducted under Part 26 is scientifically sound and legally defensible.

Proposed § 26.31(d)(1)(ii) would amend current Section 2.1(b) in Appendix A to Part 26 and would permit licensees and other entities, when conducting for-cause, post-event, and followup testing, to test for any drugs listed on Schedules I-V of the CSA that the licensee or other entity suspects the individual may have abused, as follows:

The proposed paragraph would add a reference to post-event testing for consistency with the intent of current Section 2.1(b) in Appendix A to Part 26, which permits testing for any illegal drugs during a for-cause test. The current rule includes post-event testing within the definition of for-cause testing whereas the proposed rule would use a distinct term, ''post-event'' testing, to refer to the testing that is required following certain events, as discussed with respect to proposed § 26.31(d)(3). Therefore, it would be necessary to add a reference to post-event testing to this paragraph to retain the full intent of the current provision.

The proposed paragraph would also add a reference to followup testing, which would permit the licensee or other entity to test for an additional drug if an individual who is subject to followup testing is suspected of having abused it. For example, if an SAE, in the course of performing a determination of fitness under proposed § 26.189 [Determination of fitness], found that an individual was abusing barbiturates, this provision would permit followup testing to verify that the individual is abstaining from such abuse. This proposed change would be made to strengthen the followup testing element of FFD programs by ensuring that followup testing would detect continued drug abuse and would therefore, meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

The proposed paragraph would retain the limitation in current Section 2.1(b) in Appendix A to Part 26, which permits testing only for illegal drugs that the individual is suspected of having abused, and extend that limitation to followup testing. The proposed rule would extend this limitation to followup testing to protect donors' rights to privacy, which is the same reason that the limitation was established in the current rule with respect to for-cause testing. That is, licensees and other entities would be prohibited from conducting a wide spectrum of tests for any drugs without suspicion that the individual had abused them, because such tests could reveal personal medical information about the individual that is irrelevant to the performance objectives of this part, as discussed with respect to § 26.23 [Performance objectives]. Thus, extending the current limitation on for-cause testing to followup testing would meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

The proposed paragraph would replace the term, ''illegal drugs,'' in current Section 2.1(b) in Appendix A to Part 26 with a specific reference to the drugs that are listed on Schedules I–V of the CSA. These schedules list drugs with abuse potential and include many drugs with legitimate medical uses that are not ''illegal'' when used in accordance with a valid prescription for medical purposes. Therefore, replacing the term, ''illegal drugs,'' with the reference to Schedules I–V of the CSA would more accurately characterize the specific drugs for which testing is permitted. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.31(d)(1)(ii) would also apply the new requirements in proposed § 26.31(d)(1)(i)(D) related to testing for drugs that are not included in the FFD program's panel of drugs to for-cause, post-event, and followup testing. The proposed paragraph would require the assays and cutoff levels to be used in testing for the additional drugs to be certified by a forensic toxicologist in accordance with proposed § 26.31(d)(1)(i)(D). The proposed provision would provide consistency with proposed § 26.31(d)(1)(i)(D) and ensure that the testing would be scientifically sound and legally defensible. The proposed change would be made to protect donors' rights to due process, as it relates to minimizing the possibility of false positive test results, and strengthen the effectiveness of FFD programs by ensuring that tests for additional drugs that are conducted for cause, post-event, or as part of a followup program will accurately detect drugs that an individual may have abused. Therefore, this proposed change would be made to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26, and Goal 3, which is to improve the effectiveness and efficiency of FFD programs.

The last sentence of proposed § 26.31(d)(1)(ii) would be added to prohibit inappropriate practices that some FFD programs have implemented. The NRC is aware that some FFD programs have directed their HHS-certified laboratories to test specimens that are collected for for-cause, post-event, or followup testing at the assay's LOD without first subjecting the specimens to initial testing. In addition, if a drug or drug metabolite is detected at the LOD, the MROs in these programs have confirmed the test result as an FFD policy violation, despite the quantitative test result falling below the FFD program's established confirmatory cutoff level. Although these practices may increase the likelihood of detecting drug abuse, they are inconsistent with one of the bases for establishing cutoff levels for drug testing in the rule, which is to minimize the likelihood of false positives that could result in the imposition of sanctions on an individual who has not abused drugs. It also subjects individuals who are undergoing for-cause, post-event, or followup testing to unequal treatment when compared to individuals who are subject to random and pre-access testing, in which the established cutoff levels must be applied. Therefore, the proposed rule would specifically prohibit these practices to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26, by requiring that individuals who are subject to for-cause, post-event, and followup testing must be subject to the same testing procedures and cutoff levels as others who are tested under this part.

Proposed § 26.31(d)(2) [Random testing] would reorganize and amend the requirements for conducting random testing, which currently appear in § 26.24(a)(2), as follows:

Proposed § 26.31(d)(2)(i) would add a new requirement for licensees and other entities to administer random testing in a manner that provides reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected. This proposed provision would be added because the NRC is aware of instances in which individuals who believed they would have a non-negative result, if tested, have been able to determine the

days on which collections were being conducted, which then gave them the opportunity to leave work under the guise of illness in order to avoid the possibility of being tested. The ability to detect that specimens are or will be collected for random testing also provides an opportunity for individuals to be prepared to subvert the testing by procuring an adulterant or urine substitute and keeping it available on their persons during the periods that specimens are collected. However, the NRC also recognizes that it is impossible to ensure that individuals are unable to detect the periods during which specimens are being collected. At a minimum, coworkers will be suspicious that collections are occurring if they observe an individual leaving the work site and returning within a short time, even if the supervisor and individual do not discuss the reason for the individual's short absence. Therefore, the proposed paragraph would require licensees and other entities to conduct random testing in a manner that would provide ''reasonable assurance'' that individuals are unable to predict when specimens will be collected, rather than requiring them to ''ensure'' that the period of time during which specimens will be collected cannot be detected. However, licensees and other entities would be required to minimize the likelihood that individuals who are subject to testing know that they are more likely to be called for testing at certain times than others.

Within this context, proposed § 26.31(d)(2)(i)(A) would be added to require licensees and other entities to take reasonable steps to either conceal from the workforce that collections will be performed during a scheduled collection period, or create the appearance that specimens are being collected during a portion of each day on at least four days in each calendar week at each site. This proposed provision would require licensees and other entities to take reasonable steps to minimize the cues that persons may use to detect that specimens will be collected at a certain time. These cues may include, but are not limited to, the presence of a mobile collection facility on site and the presence of collectors at the site only on days that collections occur, or having the lights on in a designated collection site and occupying it only when the collection site is in use. A reasonable step to minimize cues associated with activities inside a collection site could be covering any outside windows so that a passerby cannot detect whether the collection site is occupied. Other steps to meet the proposed requirement could include, but would not be limited to, stationing a mobile collection facility on site for some part of the day on four days each week or assigning individuals to staff the designated collection site during periods that specimens are not being collected during some portion of each day on at least four days in each calendar week. Maintaining the appearance that the collection site is active on more than half of the days in each week would make it more difficult for individuals to plan to subvert the testing process by leaving work when they believe specimens are being collected. The requirements in proposed § 26.31(d)(2)(i) and (A) would be added to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by reducing the opportunities for individuals to subvert the testing process by having advanced warning that specimens are being collected.

Proposed § 26.31(d)(2)(i)(B) would amend the third sentence of current § 26.24(a)(2), which requires that specimens must be collected ''at various times during the day.'' The proposed rule would expand the current requirement to require licensees and other entities to ''collect specimens on an unpredictable schedule, including weekends, backshifts, and holidays, and at various times during a shift.'' The purpose of the current and proposed provisions is to ensure that individuals cannot predict the times at which they will be tested, as well as prevent them from perceiving that there are ''safe'' periods during which they will not be tested that may lead them to believe they could engage in substance abuse without fear of detection. Varying the time periods during which specimens are collected on an unpredictable schedule would also increase the rule's effectiveness in deterring substance abuse. Adding this proposed provision would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs.

Proposed § 26.31(d)(2)(ii) would retain the third sentence of current § 26.24(a)(2), which states that random testing must be administered on a nominal weekly frequency. The current requirement to collect specimens for random testing at ''various times during the day'' would be retained in proposed § 26.31(d)(2)(i)(B).

Proposed § 26.31(d)(2)(iii) would require individuals who are selected for random testing to report to the collection site as soon as reasonably practicable after they have been notified that they have been selected for testing, within the time period established in the FFD policy. The necessity for the FFD policy to establish a time limit within which individuals must report for testing is discussed with respect to proposed § 26.27(b)(2). Proposed § 26.31(d)(2)(iii) would be added to further clarify this requirement by emphasizing the individual's responsibility to report as soon as reasonably practicable after notification. For example, in order to cover all of the possible situations in which it may not be possible for an individual to immediately report for testing after notification (which could include the time required to travel to a collection site or to change clothes and be monitored for contamination after working under a radiation work permit), the FFD policy may permit individuals up to 2 hours to report for testing after notification. However, if there are no legitimate work, travel, or other demands that prevent an individual from immediately reporting for testing, the proposed provision would require the individual to report as soon as he or she is notified. This provision would strengthen FFD programs by further reducing opportunities for individuals to subvert the testing process, as discussed with respect to proposed § 26.27(b)(2), and, therefore, would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs.

Proposed § 26.31(d)(2)(iv) would amend the first sentence of current § 26.24(a)(2) to clarify that individuals who are off site and unavailable for testing when selected for a random test, must be tested at the earliest reasonable and practical opportunity. This proposed requirement would be added to prohibit licensees and other entities from returning these individuals' names to the random testing pool without conducting a test, as has been some licensees' practice. Returning the individuals' names to the random testing pool without conducting a test ensures that they are immediately eligible for another unannounced test, as required in proposed § 26.31(d)(2)(v), but does not ensure that all individuals who are subject to this part have an equal probability of being tested. This proposed revision, therefore, would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs.

The proposed paragraph would include the phrase, ''at the earliest reasonable and practical opportunity when both the donor and collectors are available to collect specimens for testing,'' to clarify that licensees and other entities would not be required to call an individual back to the site if he

or she is off site when selected for testing. In addition, the proposed provision would not require licensees and other entities to make special arrangements to ensure that a collector is available to collect the specimens as soon as the individual returns to the site. The NRC is aware that some licensees have called in individuals and collectors in the past under these circumstances. However, these practices may permit individuals to predict that they will be subject to testing when they return to the site, which would provide them with an opportunity to take actions to subvert the testing process, as discussed with respect to proposed § 26.31(d)(2)(i). Therefore, the proposed paragraph would require licensees and other entities to collect specimens from an individual who is off site when selected for testing, in a manner that also ensures the individual does not have advance notification that he or she has been selected for testing. This proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Proposed § 26.31(d)(2)(v) would retain the second sentence of § 26.24(a)(2), which requires that an individual who has completed a test is immediately eligible for another random test.

Proposed § 26.31(d)(2)(vi) would amend the last sentence of current § 26.24(a)(2) in response to licensee implementation questions with respect to the meaning of the term, ''workforce,'' in the current rule. These questions have related to whether ''workforce'' means all individuals who are employed by the licensee, including individuals who are not subject to Part 26, all individuals at a site, or all individuals who are subject to the licensee's FFD program. The proposed paragraph would clarify that the number of random tests that must be performed in a year must be equal to 50 percent of the population of individuals who are subject to random testing under the FFD program. If several sites are covered by a common FFD program, the ''population'' would include all individuals who are subject to the common FFD program. The population would also include individuals who have applied for authorization and who are subject to random testing under proposed § 26.67 [Random drug and alcohol testing of individuals who have applied for authorization]. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(d)(3) [Drug testing] would be added to group requirements in one paragraph that are related to the general administration of drug testing. This proposed change would be made because requirements that address this topic are dispersed throughout the current rule whereas grouping them together in a paragraph would make them easier to locate within the proposed rule. The proposed reorganization would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.31(d)(3)(i) would combine some of the requirements in current Section 1.1(3) in Appendix A to Part 26, § 26.24(f), the first sentence of current Section 2.8(e)(1) in Appendix A, and current Section 4.1(a) and (b) in Appendix A to Part 26, which require licensees and other entities to use only HHS-certified laboratories to perform drug testing, except if initial tests are performed at a licensee testing facility. Other detailed requirements in these sections would be retained, but presented in the appropriate sections in proposed Subparts E [Collecting specimens for testing], F [Licensee Testing Facilities], and G [Laboratories Certified by the Department of Health and Human Services]. The proposed rule would use the term, ''non-negative,'' to replace the term, ''presumptive positive,'' in this paragraph and throughout the remainder of the rule to refer collectively to adverse validity and drug test results, as discussed with respect to the definition of ''non-negative'' in proposed § 26.5 [Definitions]. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve the organizational clarity of the rule.

The proposed paragraph would also require that specimens sent to the HHS-certified laboratory by the licensee or other entity must be subject to initial validity and drug testing by the laboratory, and any specimens that yield non-negative initial validity or drug test results must be subject to confirmatory testing by the laboratory, except for invalid specimens that cannot be tested. Specimen validity testing refers to testing conducted by a laboratory to identify attempts to tamper with a specimen. Attempts to tamper with a specimen may include (1) adulteration, which means putting a substance into a specimen that is designed to mask or destroy the drug or drug metabolite that the specimen may contain or to adversely affect the assay reagent; (2) dilution, which means adding a liquid, which, by contrast to an adulterant, would not be detected by validity testing, to the urine specimen to decrease the concentration of a drug or metabolite below the cutoff concentration; and (3) substitution, which means replacing a valid urine specimen with a drug-free specimen. When HHS published its Notice of Proposed Revisions (66 FR 43876; August 21, 2001) to the HHS Guidelines to establish requirements for specimen validity testing performed by HHS-certified laboratories, the HHS reported that the number of adulterated and substituted urine specimens has been increasing among the specimens tested under the Federal agency workplace drug testing program and the U.S. Department of Transportation (DOT) regulations (49 CFR part 40). Program experience gained since Part 26 was first promulgated has also indicated an increasing number of adulterated and substituted urine specimens submitted to HHS-certified laboratories from Part 26 testing programs. Although current Part 26 contains a number of requirements related to specimen validity (*e.g.*, the fifth sentence of current Section 2.1(e), Section 2.4(f)(2), 2.4(g)(14)-(g)(16), and 2.7(d) in Appendix A to Part 26), the methods available to tamper with specimens have become more sophisticated since the rule was first published and more sophisticated methods of detecting tampering are necessary. Therefore, the proposed rule would incorporate new requirements for HHS-certified laboratories to conduct specimen validity tests that are consistent with similar provisions contained in the most recent revision to the HHS Guidelines (69FR 19643; April 13, 2004). These new requirements for specimen validity testing would be added to strengthen FFD programs by improving current laboratory procedures to detect specimens that are dilute, adulterated, or substituted, consistent with Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines. Detecting specimen tampering is necessary to identify individuals who may attempt to hide drug abuse, because attempts to tamper with a specimen provide clear evidence that the individual is not trustworthy and reliable, and because these individuals' drug use may pose a risk to public health and safety and the common defense and security, as discussed with respect to proposed § 26.23 [Performance objectives].

Proposed § 26.31(d)(3)(ii) would amend the first sentence of current § 26.24(d)(1), which permits licensees and other entities to conduct initial testing of urine specimens at a licensee

testing facility, provided that the licensee testing facility staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented. The proposed rule would add permission for licensees and other entities to perform initial validity testing at a licensee testing facility, for the reasons discussed with respect to proposed § 26.31(d)(3)(i). Detailed requirements related to specimen validity testing at licensee testing facilities would be established in proposed Subpart F [Licensee Testing Facilities].

Proposed § 26.31(d)(3)(iii) would be based upon the portions of current Sections 2.7(e)(1) and 2.7(f)(2) in Appendix A to Part 26 that establish the cutoff levels for initial and confirmatory drug testing, respectively, which licensees must apply under the current rule. However, the proposed paragraph would require FFD programs to apply the updated cutoff levels specified in proposed § 26.163(a)(1) for initial drug testing and proposed § 26.163(b)(1) for confirmatory drug testing. Consistent with the first sentence of current § 26.24(b), the proposed paragraph would also permit FFD programs to implement more stringent cutoff levels than specified in the rule, but would establish additional requirements related to lower cutoff levels, as will be discussed further below. The permission in the first sentence of current § 26.24(b) to implement a broader panel of drugs would be relocated to proposed § 26.31(d)(1), as discussed with respect to that paragraph.

Proposed § 26.31(d)(3)(iii)(A) would retain the third and fourth sentences of current § 26.24(b) regarding management actions and sanctions for confirmed positive drug test results based on any lower cutoff levels established by the FFD program. The proposed rule would add a requirement that the lower cutoff levels must be documented in the FFD program's written policy and procedures to ensure that individuals who are subject to testing are aware of the cutoff levels that would be applied to their drug test results in order to protect their rights to due process. The proposed change would be made to meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26.

Proposed § 26.31(d)(3)(iii)(B) would require that the FFD program's cutoff levels for drugs and drug metabolites, including any more stringent cutoff levels, must be uniformly applied in all tests conducted under this part and equally to all individuals who are subject to testing, except as permitted under proposed § 26.163(a)(2) for dilute specimens and proposed § 26.165(c)(2) for retesting specimens. As discussed with respect to proposed § 26.31(d)(1)(ii), some FFD programs have adopted the practice of testing specimens at the assay's LOD for for-cause, post-event, and followup tests, which results in some individuals receiving unequal treatment under the rule. Therefore, the proposed paragraph would be added to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.31(d)(3)(iii)(C) would be added to specify requirements for establishing more stringent cutoff levels. Before implementing the more stringent cutoff levels, licensees and other entities who are subject to the rule would be required to obtain certification from an independent forensic toxicologist that the more stringent cutoff levels are technically sound and legally defensible, with two exceptions. Certification by a forensic toxicologist would not be required if: (1) The U.S. Department of Health and Human Services lowers the cutoff levels in the HHS Guidelines for the same drugs or drug metabolites and the FFD program adopts the lower HHS cutoffs or (2) the licensee or other entity previously received written approval from the NRC to apply lower cutoff levels, in accordance with current Section 1.1(2) in Appendix A to Part 26. These proposed requirements would be consistent with those contained in proposed § 26.31(d)(1)(i)(D) related to adding drugs to the panel of drugs for which testing is required under the rule and would be added here for the same reasons discussed with respect to that paragraph. Licensees and other entities would no longer be required to inform the NRC, in writing, that they have implemented new, lower cutoff levels because the purpose of the reporting would be met by the forensic toxicologist's review. Therefore, these changes would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements, while continuing to protect donors' right to accurate and reliable drug testing.

Proposed § 26.31(d)(4) [Alcohol testing] would update current § 26.24(g), which contains general requirements for conducting alcohol testing, to reflect other changes that would be made in the proposed rule. The current cross-reference to Section 2.7(o)(3) in Appendix A to Part 26 would be amended to refer to § 26.91(a) in Subpart E [Collecting Specimens for Testing], which would contain detailed requirements for conducting alcohol testing. Reference to oral fluids as acceptable specimens for initial alcohol testing would be added to this paragraph. The basis for adding oral fluids as acceptable specimens for initial alcohol testing is discussed with respect to proposed § 26.83 [Specimens to be collected]. The BAC at which a confirmatory test is required would be changed to 0.02 percent (from 0.04 percent) in the proposed paragraph for consistency with the revised alcohol cutoff levels in proposed § 26.99 [Determining the need for a confirmatory test for alcohol] and proposed § 26.103 [Determining a confirmed positive test result for alcohol]. The basis for the revised alcohol cutoff levels is discussed with respect to those sections. Reference to blood testing for alcohol would be deleted because donors would no longer be permitted to request blood testing for alcohol in the proposed rule, as discussed with respect to proposed § 26.83(a).

Proposed § 26.31(d)(5) [Medical conditions] would be added to address circumstances in which it may be impossible or inadvisable to test an individual using the procedures specified in this part. Circumstances have arisen under Part 26, as well as the programs of other Federal agencies, in which an individual's medical condition has made it inadvisable to implement testing procedures in accordance with the relevant requirements. Therefore, proposed § 26.31(d)(5)(i) would permit alternative specimen collection and evaluation procedures for rare instances in which it would be difficult or hazardous to the donor to collect breath, oral fluids, or urine specimens, including, but not limited to, required post-event testing when an individual has been seriously injured. Only the MRO would be permitted to authorize an alternative evaluation procedure, which may include, but is not limited to blood testing for alcohol. Proposed § 26.31(d)(5)(ii) would be added to clarify that necessary medical treatment may not be delayed in order to conduct drug and alcohol testing. These proposed paragraphs would be consistent with the requirements of other Federal agencies and meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.31(d)(6) [Limitations of testing] would retain and amend current

Section 2.1(d) in Appendix A to Part 26, which states that specimens collected under Part 26 may only be designated or approved for testing as described in this part and may not be used for any other analysis or test without the permission of the tested individual. The proposed paragraph would add examples of the types of analyses and tests that would be prohibited without the donor's written permission. Although the NRC is not aware of any instances in which such unauthorized testing has occurred in FFD programs under this part, the technology for performing these analyses and tests has become increasingly available since the regulation was first promulgated. These examples would be added to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Section 26.33 Behavioral Observation

Proposed § 26.33 [Behavioral observation] would be added to emphasize that behavioral observation is a required element of FFD programs. The first sentence of proposed § 26.33 would require behavioral observation of individuals who are subject to this part. The second sentence would retain current § 26.22(a)(3), (a)(4), and (b), which state that the individuals who perform behavioral observation must be trained to do so, and extend the training requirement to all individuals who are subject to Part 26. The third sentence of the proposed paragraph would require that individuals must report FFD concerns arising from behavioral observation to the appropriate personnel designated in the FFD program procedures. These proposed changes would be made to strengthen the behavioral observation element of FFD programs by increasing the likelihood that impairment and other adverse behaviors are detected and appropriately addressed by the licensees and other entities who are subject to the rule.

Section 26.35 Employee Assistance Programs

Proposed § 26.35 [Employee assistance programs] would amend current § 26.25 [Employee assistance programs (EAP)] for the reasons discussed with respect to each paragraph that would be added to the proposed rule. Proposed § 26.35(a) would retain the current provision.

In response to implementation questions, proposed § 26.35(b) would be added to clarify that licensees and other entities are not required to provide EAP services to C/V employees who are working at a licensee's or other entity's facility and are subject to this part. This proposed provision would be consistent with the interpretation of the current rule in item 13.1.4 of NUREG–1354. However, the proposed rule would continue to require that C/V employees who are subject to Part 26 must have access to an EAP, and licensees and other entities who rely upon the C/V's FFD program would continue to be required to ensure that the C/V's EAP meets the requirements of this part. The proposed paragraph would be added to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

The proposed paragraph would also state that licensees and other entities need not provide EAP services to individuals who have applied for authorization to perform job duties that would require them to be subject to this part. Licensees and other entities would not be required to provide an EAP to applicants for authorization because these individuals would not yet be performing job duties that could affect public health and safety or the common defense and security. This proposed clarification would be added because applicants would be subject to other requirements under the proposed rule, as discussed with respect to proposed § 26.25(d).

Proposed § 26.35(c) would amend the last sentence of current § 26.25 to emphasize that the identity and privacy of an individual who seeks EAP services must be protected and clarify the conditions under which an individual's confidentiality may or must be violated by EAP personnel. The proposed rule would permit EAP personnel to communicate information about an individual by name to the licensee or other entity under only two conditions: (1) If the individual waives the right to privacy, or (2) EAP personnel determine that the individual's condition or actions pose or have posed an immediate threat to himself or herself or others. The proposed provision would clarify the NRC's intent with respect to EAP confidentiality because the current provision has been misinterpreted.

The last sentence of current § 26.25 requires confidentiality for individuals who seek EAP services, except if EAP professionals determine that the individual's condition ''constitutes a hazard to himself or herself or others.'' Some licensees have over-interpreted this phrase and routinely require EAP staff to report individuals who self-refer for any reason, which is not the intent of this provision. The NRC is also aware that this phrase has been misinterpreted by some individuals who are subject to the rule as meaning that no self-referral to the EAP would remain confidential and that EAP staff always report self-referrals to licensee management. This perception appears to be widely shared, including by individuals who are subject to FFD programs that have not misinterpreted the current rule and who correctly permit EAP staff to make the determination whether an individual's condition should be reported to licensee management.

A key purpose of requiring EAPs under Part 26 is to encourage individuals and their family members to self-refer for any type of problem that could potentially impair job performance, so that early intervention may be offered to prevent the problem from adversely affecting the individuals' job performance. Upon assessment, it is not uncommon for EAP staff to find that a developing substance abuse problem is contributing to a financial or family problem for which an individual has sought assistance. As a result, the EAP provides an important means to detect and achieve early resolution of developing substance abuse and other problems, which, if left untreated, could have the potential to adversely affect an individual's ability to safely and competently perform his or her job duties. The knowledge or perception among individuals who are subject to the rule that self-referrals to the EAP will be reported to management and will routinely result in the loss of authorization represents a significant barrier to the effectiveness of the EAP element of FFD programs. Therefore, the proposed paragraph would amend the last sentence of current § 26.25 to clarify that an individual's use of the licensee's or other entity's EAP must remain confidential, except in very limited circumstances.

Proposed § 26.35(c)(1) would be added to prohibit licensees and other entities from requiring the EAP to routinely report the names of individuals who self-refer to the EAP and the nature of the problems that led to the self-referral. The proposed provision would be necessary to: (1) Eliminate some licensees' practices of requiring these reports, (2) protect individuals' privacy, and (3) strengthen the EAP element of FFD programs by eliminating a current barrier to self-referrals in some FFD programs. The term, ''routinely,'' would be used to indicate that the proposed rule would permit EAP personnel to report individuals' names and the nature of their problems if the individuals have waived the right to privacy in writing or EAP personnel determine that an individual's condition or actions pose or have posed an immediate risk to public

health and safety or the common defense and security. The proposed provision would not prohibit EAPs from reporting program utilization statistics or aggregated data that characterize the types of problems for which the program has provided services, because this type of information would not compromise individuals' privacy.

Proposed § 26.35(c)(2) would be added to provide further clarity in the language of the rule with respect to the conditions under which EAP personnel would be excepted from the confidentiality requirement in proposed § 26.35(c) and required to report a concern about an individual to the licensee or other entity. The NRC is confident that EAP personnel have the qualifications and training necessary to continue to make the professional judgments required under the current and proposed rules in these circumstances. However, the proposed rule would include more detail with respect to the conditions and actions that an EAP professional would be required to report to ensure that licensees, other entities, and individuals who are subject to the rule better understand the intent of the current and proposed provisions. The proposed rule would require EAP personnel to report a concern about a specific individual to licensee or other entity management only when they have substantive reasons to believe that an individual's condition or actions pose or have posed an immediate hazard to himself or herself or others. The phrase, ''substantive reasons to believe,'' would be used to clarify that casual and/or contextually appropriate comments made by an individual during a counseling session would not be a sufficient basis for reporting to the licensee or other entity. For example, an individual's statement that he or she is concerned about becoming an alcoholic would not constitute a substantive reason to believe that the individual's condition poses an immediate hazard. By contrast, this stated concern, in addition to evidence that the individual's personal relationships, financial condition, and/or health are suffering from his or her alcohol consumption, and any indications that the individual has been impaired while in a work status, would together constitute substantive reasons to believe that the individual's condition poses an immediate hazard and must be reported.

Proposed § 26.35(c)(2)(i)–(c)(2)(iii) would be added to provide several examples of conditions and actions that would require EAP personnel to provide a report about an individual who has self-referred to licensee or other entity management. Proposed § 26.35(c)(2)(i) would require reporting if the EAP staff has substantive reasons to believe that an individual may harm himself or herself or others, including, but not limited to, plans threatening suicide, radiological sabotage, or physical violence against others. Proposed § 26.35(c)(2)(ii) would require reporting if the EAP staff has substantive reasons to believe that an individual has been impaired from drugs or alcohol while in a work status and is likely to be impaired in the future, as discussed with respect to proposed § 26.35(c)(2). Proposed § 26.35(c)(2)(iii) would require reporting if the EAP staff has substantive reasons to believe that an individual has committed any of the acts that would require a report to the NRC under proposed § 26.219(b)(1)–(b)(3), including, but not limited to, the use, sale, distribution, possession, or presence of illegal drugs, or the consumption or presence of alcohol within a protected area or while performing job duties that require the individual to be subject to this part. The examples included in these proposed paragraphs are illustrative, but do not represent an exhaustive list of the conditions and actions that EAP staff may encounter that would be reported to licensee or other entity management under the proposed rule.

For additional clarity, proposed § 26.35(c)(3) would be added to cross-reference the provisions in the proposed rule that would specify the actions that licensees and other entities would take after receiving a report from EAP personnel that an individual's condition or actions pose or have posed an immediate hazard to himself or herself or others. As discussed with respect to those paragraphs, proposed §§ 26.69(d) and 26.77(b) would require the licensee or other entity to take immediate action to: (1) Prevent the individual from performing any job duties that require the individual to be subject to this part; (2) ensure that a determination of fitness is performed by a professional who has specific qualifications and training to address the nature of the individual's problem; and (3) either terminate the individual's authorization or ensure that the condition is resolved before permitting him or her to return to performing duties under this part.

These proposed changes to current § 26.25 would be consistent with Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26, as well as Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Section 26.37 Protection of Information

Proposed § 26.37 [Protection of information] would amend current § 26.29, which contains requirements for protecting the personal information that must be collected under Part 26. In general, the proposed section would group requirements related to the protection of personal information that are dispersed throughout the current rule to aid in locating these requirements in the proposed rule. The records retention requirement in current § 26.29(a) would be moved to proposed Subpart J [Recordkeeping and Reporting Requirements]. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.37(a) would combine and retain the first sentence of current § 26.29(a) and the second sentence of current Section 3.1 in Appendix A to Part 26. The proposed paragraph would require licensees and other entities to establish and maintain a system of files and procedures to protect the personal information that is collected under this part and maintain and use such records with the highest regard for individual privacy.

Proposed § 26.37(b) would amend current § 26.29(b) and would divide it into several paragraphs for clarity. The first sentence of the proposed paragraph would amend the first sentence of current § 26.29(b), which prohibits licensees and other entities from disclosing personal information collected under this part to any individuals other than those listed in the sentence. The proposed paragraph would continue to permit disclosure of the personal information to the listed individuals and would add permission for the licensee or entity to disclose the personal information to others if the licensee or other entity has obtained a signed release for such a disclosure from the subject individual. The proposed permission to release the personal information to individuals who are not listed in the paragraph with the written consent of the subject individual would be added because some licensees have misinterpreted the current requirement as prohibiting them from releasing the personal information under any circumstances, except to the parties listed in this paragraph. In some instances, such failures to release information have inappropriately inhibited an individual's ability to obtain information that was necessary for a review or appeal of the licensee's determination that the individual had violated the FFD policy. Therefore, the

explicit permission for licensees and other entities to release personal information when an individual consents to the release, in writing, would be added to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.37(b)(1)–(b)(8) would list in separate paragraphs the individuals to whom licensees and other entities would be permitted to release personal information about an individual. Proposed § 26.37(b)(3), (b)(4), and (b)(8) would retain unchanged the current permission for the release of information to NRC representatives, appropriate law enforcement officials under court order, and other persons as required by court order. Proposed § 26.37(b)(1), (b)(2), (b)(5), and (b)(6) would amend the related requirements contained in current § 26.29(b) to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule. The specific changes to current § 26.29(b) would include the following:

Proposed § 26.37(b)(1) would retain the current permission for the release of information to the subject individual and his or her designated representative. The proposed paragraph would add requirements for the individual to designate his or her representative in writing and specify the FFD matters to be disclosed. The proposed changes would be made in response to implementation questions from licensees. Licensees have sought guidance from the NRC related to the manner in which an individual must ''designate'' a representative.

Proposed § 26.37(b)(2) would retain the current permission for the release of information to the licensee's or other entity's MROs. The proposed rule would also permit the release of information to MRO staff members for consistency with proposed § 26.183(d), which would permit MRO staff to serve some MRO functions under the direction of the MRO. MRO staff would require access to the personal information in order to perform their job duties. The role of MRO staff in FFD programs is further discussed with respect to proposed § 26.183(d).

Proposed § 26.37(b)(5) would amend the current reference to licensee representatives who have a need to have access to the information in performing assigned duties. The current rule refers only to individuals who are performing audits of FFD programs. As a result, the current rule has been misinterpreted by some licensees as limiting the release of personal information only to such individuals. This was not the intent of the provision. Rather, the intent of the current rule was that licensees and other entities would be permitted to release information to their representatives who must have access to the personal information in order to perform assigned job duties. Therefore, the proposed rule would clarify that licensee representatives who perform determinations of fitness, such as the SAE (see the discussion of proposed § 26.187) and human resources functions, as well as auditors and other representatives of the licensee or other entity, may be permitted access to personal information but only to the extent that such access is required to perform their assigned functions.

Proposed § 26.37(b)(6) and (b)(7) would amend the portion of current § 26.29(b) that refers to ''persons deciding matters on review or appeal.'' The proposed changes would be made in response to implementation questions from licensees, including whether the rule covers persons deciding matters in judicial proceedings or only the internal appeals process specified in current § 26.28 [Appeals] as well as whether information could be released in a judicial proceeding that was not initiated by the subject individual. The proposed rule would clarify that the permission includes individuals who are presiding in a judicial or administrative proceeding, but only if the proceeding is initiated by the subject individual in proposed § 26.37(b)(6). Proposed § 26.37(b)(7) would be added to cover ''persons deciding matters under review in § 26.39'' [Review process for fitness-for-duty policy violations], as discussed with respect to that section.

Proposed § 26.37(c) would be added to require the disclosure of relevant information to licensees and other entities, including C/Vs, and their authorized representatives who have a legitimate need for the information and a signed release from an individual who is seeking authorization under this part. This proposed provision would be added to further clarify current § 26.29(b), because some licensees have misinterpreted the current provision as prohibiting the release of information to C/Vs who have licensee-approved FFD programs and conduct suitable inquiries on behalf of licensees and other entities. The proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.37(d)–(f) would retain several requirements related to the protection of information in the current rule but move them into this proposed section for organizational clarity. Proposed § 26.37(d) would combine requirements in current § 26.29(b) and Section 3.2 in Appendix A to Part 26, as they relate to an individual's access to records that are necessary for a review of an FFD policy violation. The proposed paragraph would retain the current requirements for licensees, other entities, HHS-certified laboratories, and MROs to provide the information that an individual requests related to a determination that the individual has violated the FFD policy on the basis of drug test results. Proposed § 26.37(e) and (f) would retain current Section 3.1 in Appendix A to Part 26 and the last sentence of current § 26.29(b), respectively.

Section 26.39 Review Process for Fitness-for-Duty Policy Violations

Proposed § 26.39 [Review process for fitness-for-duty policy violations] would amend current § 26.28 [Appeals] and separate it into several paragraphs. The current section title would be revised to eliminate the implication that the internal management review is a legal proceeding. Several requirements would be added to clarify and strengthen individuals' due process rights during the review, as follows:

Current § 26.28 requires that individuals who are subject to the rule have an opportunity for a management review of a determination that the individual has violated the licensee's or other entity's FFD policy. Proposed § 26.39(a) would retain the requirement that the review must be impartial and add a requirement that the review must be objective. The requirement for an objective review would be added because some licensees have permitted the same individuals who were involved in the initial determination that an individual violated the FFD policy to provide the review that is required under current § 26.28. The impartiality of individuals who are reviewing their own decisions is questionable, and calls into question the effectiveness of the review process. Therefore, the proposed requirement for the review to be both impartial and objective would emphasize the NRC's intent that the review process must be effective.

In keeping with revisions to several other sections that would be intended to counter subversion of the testing process, proposed § 26.39(a) would extend this opportunity to request a review to all FFD violations, including, but not limited to, violations based upon non-negative validity test results. The proposed paragraph would also clarify that applicants for authorization must be given the opportunity for a

review. Experience with implementing this section of Part 26 has indicated that some licensees did not provide a review process to individuals who tested positive on pre-access tests. However, the factors that could produce false non-negative test results among licensee and C/V employees (*e.g.*, administrative or testing errors) are equally likely to occur during pre-access testing of applicants for authorization. If applicants are not provided with a review process, it is possible that some of them would be effectively barred from the industry based on test results erroneously determined to be a violation of the licensee's or other entity's FFD policy. Providing applicants with the opportunity to request a review would also enhance program credibility.

Proposed § 26.39(b) would specify that FFD procedures must describe the contents and purpose of the notice that licensees and other entities would be required to provide to an individual who has violated an FFD policy and state that the individual may submit additional relevant information as part of the review process. This proposed clarification is necessary because experience with implementing current § 26.28 has indicated that, in some cases, individuals do not understand the purpose of the review process and their associated rights.

Proposed § 26.39(c) would require that more than one representative of the licensee's or other entity's management must conduct the review and that the reviewers may not be anyone who was involved in the original determination that the individual violated the FFD policy. These proposed clarifications are necessary because experience with implementing current § 26.28 has indicated that, in some instances, the persons who were responsible for the initial determinations have been conducting reviews. The proposed requirements that the reviewers may not have been involved in the initial determination and that more than one management representative must conduct the review would strengthen the impartiality and objectivity of the review process in order to further enhance individuals' due process rights.

Proposed § 26.39(d) would add a requirement that any records associated with the FFD policy violation must be deleted or corrected, as appropriate, if the policy violation decision is overturned. This requirement would be necessary because the proposed rule permits licensees and other entities to share and rely on information gathered by other Part 26 programs to a greater extent than currently. Therefore, incorrect records related to an FFD policy violation could effectively bar an individual from further employment under a Part 26 program if such information is transmitted to other licensees and entities who are considering whether to grant authorization to an individual. The proposed requirement to delete or correct any records associated with an FFD policy violation that has been overturned would protect individuals from such potential adverse consequences.

Proposed § 26.39(e) would amend the last sentence of current § 26.28, which states that licensees and other entities are not required to provide a review procedure to a C/V's employees and applicants when the C/V is administering its own drug and alcohol testing. The proposed rule would amend the current paragraph in response to implementation questions from licensees who have asked whether the current provision excuses them from providing a review process for C/V employees at any time, including situations in which the FFD policy violation was determined as a result of testing conducted by the licensee. The proposed rule would revise this sentence to clarify that the licensee or other entity need not provide a review process if the FFD violation to be reviewed was identified through the C/V's drug and alcohol testing program. If the FFD violation was determined through the licensee's drug and alcohol testing, the licensee would continue to be required to provide the impartial and objective review.

Section 26.41 Audits and Corrective Action

Proposed § 26.41 [Audits and corrective action] would rename and amend current § 26.80 [Audits]. The phrase, ''and corrective action,'' would be added to the section title to emphasize the NRC's intent that licensees and other entities must ensure that corrective actions are taken in response to any adverse findings resulting from an audit. In addition, the proposed rule would reorganize audit requirements in current § 26.80, and move several audit and inspection requirements that are currently addressed in Appendix A to Part 26 into this section. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.41(a) [General] would amend the last sentence in current § 26.80(a), which states that licensees retain responsibility for the effectiveness of C/V programs and the implementation of appropriate corrective action. The proposed paragraph would revise this requirement to include HHS-certified laboratories as well as any C/V FFD program elements and FFD programs upon which the licensee or other entity relies, which is consistent with the original intent of the current requirement. The proposed change would be to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.41(b) [FFD program] would amend the required audit frequency in current § 26.80(a). (The other requirements contained in current § 26.80(a) are addressed in other paragraphs of proposed § 26.41, as discussed with respect to the paragraphs of the proposed rule that address those topics.) The proposed rule would decrease the current 12-month FFD program audit frequency to a nominal 24-month frequency, which would grant a petition for rulemaking (PRM–26–1) submitted by Virginia Power on December 30, 1993. Experience with implementing Part 26 has shown that annual audits of the entire FFD program are unnecessary to ensure continued program effectiveness and, therefore, place an unnecessary burden on those entities who are subject to the rule. The proposed audit frequency would be decreased to 24 months to relieve this burden and to be consistent with the NRC's schedule for inspecting FFD programs. The proposed change would be consistent with Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Although the proposed rule would decrease the required audit frequency, licensees and other entities would be required to monitor program performance indicators and operating experience, consistent with a performance-based approach, and audit FFD program elements more frequently than every 24 months, as needed. In determining the need for more frequent audits, the proposed rule would require licensees and other entities to consider the frequency, nature, and severity of discovered problems, testing errors, personnel or procedural changes, previous audit findings, and ''lessons learned.'' The proposed change is intended to promote performance-based rather than compliance-based audit activities and clarify that programs must be audited following a significant change in personnel, procedures, or equipment as soon as reasonably practicable. The NRC recognizes that FFD programs evolve and new issues and problems continue to arise.

Turnover of FFD program personnel and contracted services personnel, such as specimen collectors, exacerbates this concern. Licensee audits have identified problems that were associated in some way with personnel changes, such as new personnel not understanding their duties or procedures, the implications of actions that they took, did not take, or changes in processes. The purpose of these focused audits would be to ensure that changes in personnel, procedures, or equipment do not adversely affect the operation of the particular program element or function in question. Accordingly, the proposed audit requirement would ensure that any programmatic problems that may result from significant changes in personnel, procedures, or equipment are detected and corrected on a timely basis. This proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs, by requiring more frequent audits of FFD program elements that may require closer monitoring than a nominal 24-month frequency would provide.

Proposed § 26.41(c) [C/Vs and HHS-certified laboratories] would amend the audit and inspection requirements for these entities that are contained in the second sentence of current § 26.80(a) and the third sentence of Section 2.7(m) in Appendix A to Part 26, as follows:

Proposed § 26.41(c)(1) would further amend the requirement in current § 26.80(a) for annual audits of C/V FFD programs and program elements and HHS-certified laboratories. The current annual audit frequency would be retained only for those portions of C/V FFD programs whose personnel work off site and are not under the daily supervision of FFD program personnel. The activities of C/V personnel who work on site and are under the daily supervision of FFD program personnel would be audited under proposed § 26.41(b). Retention of the annual audit requirement for C/Vs whose personnel work off site is necessary to ensure that the services provided continue to be effective, given that other means of monitoring their effectiveness, such as daily oversight, are unavailable. The proposed paragraph would also retain the annual audit requirement for HHS-certified laboratories. This audit frequency would be retained because of the key role the laboratories play in the overall effectiveness of Part 26 programs. Retention of these annual audit requirements in the proposed paragraph would deny the petition for rulemaking (PRM–26–1) submitted by Virginia Power on December 30, 1993.

Proposed § 26.41(c)(2) would be added to relax some requirements related to annual audits and inspections of the HHS-certified laboratories upon which licensees and other entities rely for drug testing services. The proposed rule would permit licensees and other entities who are subject to the rule to rely upon the inspections of HHS laboratories that are performed for HHS-certification reviews and would no longer require licensees and other entities to audit the effectiveness of services that are reviewed by HHS inspectors. The current rule contains a number of requirements that are inconsistent with the requirements for drug testing of other Federally mandated programs. For example, the current rule permits donors to request confirmatory alcohol testing of a blood specimen at an HHS-certified laboratory, which is not permitted by other Federal agencies, and some of the cutoff levels established in the current rule are higher, in the case of testing for marijuana metabolite, or lower, in the case of testing for opiates, than other Federal agencies'. These programmatic discrepancies have made licensee audits of HHS-certified laboratories necessary to ensure the effectiveness of the unique drug and alcohol testing services required for Part 26 programs because these services are not addressed in the HHS inspections. However, as discussed in Section IV.B, the proposed rule would eliminate the majority of such discrepancies. Therefore, the annual audits of HHS-certified laboratories by licensees that have been necessary under the current rule would be redundant under the proposed rule, except in certain conditions described below. The proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.41(c)(2) would continue to require licensees and other entities to conduct annual audits of any services provided to the licensee or other entity that were not addressed in the annual HHS-certification review. This annual audit requirement would be retained because proposed § 26.31(d) would retain the permission in the current rule for licensees and other entities to establish lower cutoff levels and test for drugs in addition to those for which testing is required under this part. If a licensee or other entity chooses to implement more stringent cutoff levels or a broader panel of drugs than required in the proposed rule, the licensee or other entity would be required to ensure that annual audits of the HHS-certified services related to those cutoff levels and drug tests are performed.

The last sentence of proposed § 26.41(c)(2) would be added in response to stakeholder comments that were made during the public meetings discussed in Section V, related to the scope of the current audit requirements. The stakeholders noted that the scope of the current audit requirements is ill-defined in the current rule, which they believe has resulted in unnecessary variability between FFD programs and also an unnecessary burden. For example, the stakeholders noted that some FFD programs have interpreted the current rule as requiring annual audits of any substance abuse treatment program from which individuals who are subject to their FFD program may seek services as well as the entire national EAP company with whom the licensee or other entity contracts to obtain the services of one individual in the local geographical area. The stakeholders suggested that such audits are costly and have little relationship to continuing FFD program effectiveness. The scope of audit requirements was not specified in the current rule because there is a wide variety of contractual relationships between licensees, other entities, and C/Vs for FFD program services that make it impractical to establish limits that would be universally applicable. However, the examples provided by the stakeholders at the public meeting were convincing that some limitations on the scope of the audit requirements would be appropriate in the proposed rule. Therefore, the proposed rule would not require licensees and other entities to audit organizations that do not routinely provide FFD services to the licensee or other entity, such as local hospitals or a substance abuse treatment facility. It would be unnecessary to audit these organizations because the FFD program would use their services infrequently, there would be a reasonable expectation of quality, and weaknesses in these services could be identified through other means. For example, under proposed § 26.187 [Substance abuse professional], the SAE would be required to monitor the substance abuse treatment of individuals who require it and so would have the qualifications and information necessary to assess the quality of the treatment services an individual receives. The SAE would have the authority to seek other services on behalf of the FFD program if he or she identifies weaknesses in a treatment program. Therefore, this change would be made to meet Goal 5 of this

rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.41(d) [Contracts] would incorporate and amend the requirements of current Section 2.7(m) in Appendix A to Part 26 and others, which address contractual relationships to permit licensees and other entities access to the HHS-certified laboratories for the purposes of conducting the audits and inspections required under the rule. The portions of current Section 2.7(m) in Appendix A to Part 26 that relate to NRC inspections of HHS-certified laboratories would be moved to § 26.221 [Inspections] in Subpart K of the proposed rule, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.41(d)(1) would amend the second sentence of current Section 2.7(m) in Appendix A to Part 26, which requires licensee contracts with HHS-certified laboratories for drug testing and alcohol confirmatory testing, as well as contracts for collection site services, to permit the licensee to conduct unannounced inspections. The proposed rule would retain the current requirement with respect to HHS-certified laboratories, and expand it to require that contracts with any C/V (which would include collection services providers) must permit the licensee or other entity to conduct audits at any time, including unannounced times, and to review all information and documentation that is reasonably relevant to the audits. The proposed paragraph would extend the current requirement to any C/V with whom the licensee or other entity contracts for FFD program services to enhance the effectiveness of the licensees' and other entities' audits should unannounced audits appear to be necessary. For example, a licensee or other entity may receive allegations that an off-site C/V is falsifying records or that a contract MRO or SAE is using drugs, and the licensee or other entity may determine that an unannounced audit would provide the most effective means to investigate such allegations. The proposed paragraph would ensure that the licensee's or other entity's contract with the C/V would permit the unannounced audit as well as access to any information necessary to conduct the audit. Therefore, this proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Proposed § 26.41(d)(2) would be added to ensure that licensees' and other entities' contracts with C/Vs and HHS-certified laboratories permit the licensee or other entity to obtain copies of and take away any documents that auditors may need to assure that the C/V, its subcontractors, or the HHS-certified laboratory are performing their functions properly and that staff and procedures meet applicable requirements. This proposed provision would respond to several incidents in which parties under contract to licensees did not permit Part 26 auditors to remove documents from a C/V's premises that were necessary to document audit findings, develop corrective actions, and ensure that the corrective actions were effective. Therefore, the proposed requirement would meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

The proposed paragraph would permit HHS-certified laboratories to reasonably limit the use and dissemination of the documentation that auditors copy and take away from the laboratories, in order to protect proprietary information and donors' confidentiality. This proposed permission would be added in response to stakeholder requests at the public meetings discussed in Section V. Because the current and proposed rules permit sharing of audit reports among licensees and C/Vs who rely on a laboratory, and it may be otherwise difficult to maintain appropriate control of proprietary information or donors' personal information, the NRC concurred with the stakeholders' request. This proposed change would meet Goal 7 of this rulemaking, as it relates to the privacy of individuals who are subject to Part 26, and would protect the trade secrets of HHS-certified laboratories who would continue to be subject to auditing under the proposed rule.

Proposed § 26.41(d)(3) would amend the third sentence of current Section 2.7(m) in Appendix A to Part 26, which requires licensees and other entities to carry out inspections and evaluation of the procedural aspects of an HHS-certified laboratory's drug testing operations before awarding a contract to the laboratory, by adding a cross-reference to proposed § 26.41(g). Proposed § 26.41(g) would permit licensees and other entities to forgo the otherwise required pre-award evaluation under certain specific circumstances, as discussed with respect to that paragraph.

Proposed § 26.41(e) [Conduct of audits] would retain the requirements in current § 26.80(b).

Proposed § 26.41(f) [Audit results] would retain the portion of current § 26.80(c) that requires licensees and other entities to document audit findings and recommendations, report them to senior management, and document corrective actions taken in response to any identified adverse conditions. The proposed paragraph would also add two requirements. The second sentence of proposed § 26.41(f) would specify the required content of audit reports to include identification of any conditions that are adverse to the proper performance of the FFD program, the cause of the condition(s), and, when appropriate, recommended corrective actions. The third sentence of the proposed paragraph would require licensees and other entities to review the audit findings and take corrective actions, including re-auditing of the deficient areas where indicated, to preclude, within reason, repetition of the condition. The proposed rule would add these two sentences for consistency with Criterion XVI in Appendix B to 10 CFR Part 50 to indicate that FFD audit reports are to be included in licensees' and other entities' corrective action programs. Some licensees have handled FFD audit reports outside of their normal corrective action programs, which address other conditions adverse to quality. As a result, some corrective actions for FFD program weaknesses have not been timely or effective. Therefore, the proposed rule would add these requirements to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

The last sentence of current § 26.80(c), which refers to the requirements for auditing HHS-certified laboratories in Appendix A to Part 26, would be deleted as redundant with proposed § 26.41(c). This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.41(g) [Sharing of audits] would respond to licensees' implementation questions related to the third and fourth sentences in current § 26.80(a), which permit licensees and other entities to accept audits of C/Vs that are conducted by other FFD programs. The proposed paragraph would clarify the current permission to accept and rely on others' audits in response to implementation questions that the NRC has received from licensees with respect to the sharing of audits, as documented in Section 17 of NUREG–1354, and items 11.4 and 11.5 of NUREG–1385.

Proposed § 26.41(g) would amend the current provision to incorporate specific permission for licensees and other entities to jointly conduct audits as well

as rely on one another's audits. Reference to HHS-certified laboratories would also be added to indicate the applicability of these permissions to licensees' and other entities' audits of HHS-certified laboratories. These proposed changes would be consistent with the guidance issued by the NRC in the documents referenced above and current licensee practices. Therefore, the proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.41(g)(1) and (g)(2) would be added to require licensees and other entities to identify any areas that were not covered by a shared or accepted audit and ensure that any unique services used by the licensee or other entity that were not covered by the shared audit are audited. For example, an FFD program may use lower cutoff levels for drug testing than the FFD program(s) that conducted a shared audit with the result that the shared audit did not address the HHS-certified laboratories' procedures for testing at the first FFD program's lower cutoff levels. In this case, the first FFD program would not be permitted to rely on the shared audit with respect to the lower cutoff levels and would be required to ensure that the HHS-certified laboratories' procedures for testing at the lower cutoff levels are audited separately (or in conjunction with other FFD programs who use the same cutoff levels). These proposed provisions would be consistent with the guidance issued by the NRC in the documents referenced above and current licensee practices. Therefore, the proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.41(g)(3) would retain the portion of the third sentence of current § 26.80(a) that states that licensees and other entities need not re-audit the same C/V for the same period of time, and extend this permission to audits of HHS-certified laboratories. Extending the current provision to cover audits of HHS-certified laboratories would be consistent with the guidance issued by the NRC in the documents referenced above and current licensee practices. Therefore, this proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.41(g)(4) would retain the fourth sentence of current § 26.80(a), which requires licensees and other entities to retain copies of the shared audit reports.

Proposed § 26.41(g)(5) would be added to permit licensees and other entities to immediately obtain drug testing services from another HHS-certified laboratory, subject to certain conditions, in the event that the laboratory used by the licensee or other entity should lose its certification. Within 3 months of obtaining services from the replacement laboratory, the proposed paragraph would require the licensee or other entity to ensure that an audit is conducted of any aspects of the laboratory's services that are used by the licensee or other entity that have not been audited within the past 12 months by another licensee or entity who is subject to this part. This proposed provision would enhance the effectiveness of FFD programs by ensuring that drug testing would not be interrupted or delayed if an HHS-certified laboratory loses its certification, as some licensees have experienced. The reliability of drug testing services provided by the replacement laboratory would be assured by the auditing and inspection activities of other licensees and entities who have been using the services of the replacement laboratory, as well as the audit conducted by the licensee or other entity of any services that have not been audited by other licensees or entities who are subject to this part. The proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Subpart C—Granting and Maintaining Authorization

Section 26.51 Purpose

A new § 26.51 [Purpose] would be added to describe the purpose of the proposed subpart. Proposed § 26.51 would emphasize that Subpart C contains ''FFD requirements'' for granting and maintaining authorization because the NRC has also published other requirements that establish additional steps that licensees and other entities must take as part of the process of determining whether to grant authorization to an individual. These additional requirements, found in particular in 10 CFR 73.56 and access authorization orders issued by the NRC to nuclear power plant licensees, require the licensee or other entity to conduct a psychological assessment and a credit and criminal history check of the individual, and to interview persons who have knowledge of the applicant for authorization. A central goal of adding Subpart C to the proposed rule is to eliminate redundancies and ensure consistency between the FFD requirements and these other requirements.

Section 26.53 General Provisions

A new § 26.53 [General provisions] would provide a generic summary of the requirements and process for determining whether individuals may be granted and maintain authorization.

Proposed § 26.53(a) would introduce four new terms to Part 26: (1) ''initial authorization,'' (2) ''authorization update,'' (3) ''authorization reinstatement,'' and (4) ''authorization with potentially disqualifying FFD information.'' These terms would be used to describe categories of proposed requirements for granting authorization. The proposed categories, which are based upon whether an individual who has applied for authorization has previously held authorization under Part 26 and the length of time that has elapsed since the individual's last period of authorization ended, are defined in proposed § 26.55 [Initial authorization], proposed § 26.57 [Authorization update], proposed § 26.59 [Authorization reinstatement], and proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information]. Proposed § 26.53(a) would direct licensees or other entities to use the criteria for granting authorization to individuals found in proposed §§ 26.55, 26.57, 26.59, or 26.69, depending on which of the proposed sections would apply to the individual seeking authorization. The current rule in § 26.27 discusses actions that the licensee must take before the initial granting of access or assignment of specified duties to an individual, but does not use the concepts of ''initial authorization,'' ''authorization update,'' ''authorization reinstatement,'' or ''authorization with potentially disqualifying FFD information.'' These concepts would be used in the proposed rule to focus the requirements for authorization more precisely on whether the individual has established a ''track record'' in the industry, and to specify the amount of original information gathering that licensees or other entities would be required to perform according to whether previous FFD programs have collected information about the individual. In addition, the same concepts are used in access authorization requirements, so incorporating them into Part 26 would increase the consistency between the related regulations.

Proposed § 26.53(b) would define the meaning of the term, ''interruption,'' which would be used in proposed § 26.57 [Authorization update] and

proposed § 26.59 [Authorization reinstatement] to refer to the interval of time between periods during which an individual holds authorization under Part 26. Licensees and other entities would calculate an interruption in authorization as the total number of days falling between the day upon which the individual's last period of authorization ended and the day upon which the licensee or other entity grants authorization to the individual. Proposed § 26.53(b) would also specify that if potentially disqualifying FFD information is disclosed or discovered about an individual, licensees and other entities must implement the applicable requirements in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information] in order to grant or maintain an individual's authorization, rather than relying on the requirements in proposed §§ 26.55, 26.57, or 26.59, as discussed further with respect to proposed § 26.69.

Proposed § 26.53(c) would reiterate the FFD training requirements in proposed § 26.29 [Training] and the fatigue training requirements in proposed § 26.197(c) [Training and examinations] to clarify that all individuals must meet the applicable requirements for initial or refresher FFD training, as appropriate, before the licensee or other entity may grant authorization to the individuals. The proposed paragraph would repeat the training requirements for organizational clarity, because they apply to the authorization process. As discussed in Section V, stakeholders requested that the proposed rule present requirements in the order in which they would apply to licensees' and other entities' FFD processes. Therefore, the proposed paragraph would be added to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.53(d) would permit licensees and other entities to rely upon other licensees' or entities' Part 26 programs and program elements, as well as licensee-approved Part 26 programs and program elements of C/Vs, to meet the requirements of this subpart for granting and maintaining authorization. Proposed § 26.53(d) would expand upon two sections of the current rule that similarly permit licensees and other entities to accept and rely upon other Part 26 programs and program elements. Specifically, current § 26.24(a)(1) permits licensees to accept results from drug and alcohol tests that were administered under another Part 26 program within the past 60 days, and current § 26.23 [Contractors and vendors] permits licensees to rely upon C/Vs' Part 26 programs that have been formally reviewed and approved by the licensee. Consistent with the principle of permitting licensees to accept and rely upon other Part 26 programs in their authorization decisions, guidance contained in NUREG–1385 also indicates that licensees may ''accept'' an authorization granted by a previous licensee for individuals who transfer between licensees with only a ''short break'' in authorization. The proposed rule would substantially increase the specificity of the requirements that must be met by licensees or other entities for granting authorization and establish detailed minimum standards that all programs must meet. These proposed detailed minimum standards are designed to address recent changes in industry practices that have resulted in a more transient workforce, as noted in the discussion of Subpart C in Section IV. B. Because the FFD programs of licensees and other entities would be substantially more consistent than in the past under these proposed detailed standards, permitting licensees and other entities to rely on other Part 26 programs to meet the proposed rule's requirements is reasonable and appropriate. In addition, the proposed provision would eliminate unnecessary redundancies in the steps required to grant authorization to an individual who is transferring from one Part 26 program to another.

Section 26.55 Initial Authorization

A new § 26.55 [Initial authorization] would define the category of ''initial authorization'' requirements to apply both to individuals who have not previously held authorization under Part 26 and those whose authorization has been interrupted for a period of 3 years or more and whose last period of authorization ended favorably. Two considerations support the proposed requirement for individuals whose last period of authorization ended 3 or more years previously to satisfy the same requirements as individuals who have never previously held authorization. In general, the longer the period of time since the individual's last period of authorization ended, the greater the possibility that the individual has developed an active substance abuse problem or undergone significant changes in lifestyle or character that would diminish his or her trustworthiness, reliability, and ability to perform work safely and competently. Therefore, it is reasonable to require a full and extensive screening identical to that given an individual who has not held authorization, and has not been subject to drug and alcohol testing and behavioral observation, for 3 years or more. For similar reasons, access authorization requirements also require that individuals who have not held authorization for 3 years or more must be subject to the same screening as individuals who have not previously held authorization. Therefore, requiring individuals whose last period of authorization ended 3 or more years previously to satisfy the same requirements as individuals who have never held authorization would increase the consistency of Part 26 with the related access authorization requirements.

Proposed § 26.55(a)(1) would require the licensee or other entity, before granting initial authorization to an individual, to obtain and review a self-disclosure in accordance with the applicable requirements of proposed § 26.61 [Self-disclosure and employment history]. As discussed with respect to proposed § 26.61, the self-disclosure and employment history would require the individual to report violations, if any, involving drugs or alcohol and the individual's current and past employment history. The proposed requirement is similar to the requirement in § 26.27(a)(1) of the current rule that a written statement must be obtained from the individual addressing the topics that are specified in current § 26.27(a)(1). The discussion of proposed § 26.61 compares the topics required to be addressed in the written statement under the current rule with the topics that would be addressed in the self-disclosure under the proposed rule. As discussed with respect to proposed § 26.61(a)(3), the period of time to be addressed in the self-disclosure by an applicant for initial authorization would be the shorter period of either the past 5 years or the interval of time since the individual's eighteenth birthday.

Proposed § 26.55(a)(2) would require the licensee or other entity, before granting initial authorization to an individual, to complete a suitable inquiry in accordance with the applicable requirements of proposed § 26.63 [Suitable inquiry]. The proposed requirement is similar to the requirement in § 26.27(a)(2) of the current rule that a suitable inquiry must be completed addressing the topics that are specified in § 26.27(a)(2). The discussion of proposed § 26.63 compares the topics that must be addressed in the suitable inquiry under the current rule with the topics that would be addressed in the suitable inquiry under the proposed rule. Proposed § 26.63(f)(1) specifies that the

period of time that the suitable inquiry would address for an initial authorization must be the shorter period of either the past 3 years or the interval of time since the individual's eighteenth birthday.

Proposed § 26.55(a)(3) would require the licensee or other entity, before granting initial authorization to an individual, to ensure that the individual is subject to pre-access drug and alcohol testing in accordance with the applicable requirements of proposed § 26.65 [Pre-access drug and alcohol testing]. Current § 26.24(a)(1) requires testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities within the scope of Part 26. The discussion of proposed § 26.65 compares the proposed pre-access drug and alcohol testing requirements for initial authorization to the requirements in the current rule. Proposed § 26.65 would require the licensee or other entity to ensure that the individual had negative drug and alcohol test results from testing that had been completed within the past 30 days before granting authorization to the individual, for the reasons discussed with respect to that section.

Proposed § 26.55(a)(4) would require the licensee or other entity also to ensure that the individual is subject to random drug and alcohol testing in accordance with the applicable requirements of proposed § 26.67 [Random drug and alcohol testing of individuals who have applied for authorization]. Current § 26.64(a)(2) requires unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner. The discussion of proposed § 26.67 compares the proposed random drug and alcohol testing requirements for initial authorization to the requirements in the current rule.

Proposed § 26.55(b) would be added to require that the licensee or other entity must meet the requirements in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information] to grant authorization to the individual, if potentially disqualifying FFD information is disclosed or discovered about the individual who is applying for authorization that has not previously been evaluated by another licensee or other entity.

Section 26.57 Authorization Update

Proposed new § 26.57 [Authorization update] would define the category of ''authorization update'' requirements for granting authorization to individuals whose authorization has been interrupted for more than 365 days but less than 3 years and whose last period of authorization was terminated favorably. As noted in the discussion of Subpart C in Section IV. C, the proposed requirements for granting an authorization update would be less stringent than the proposed requirements for granting initial authorization. The proposed requirements would be less stringent for two reasons: (1) The individual who is applying for an authorization update would have a more recent ''track record'' of successful performance within the industry, and (2) the licensee or other entity would have access to information about the individual from the licensee or other entity who last granted authorization to him or her because of the increased information-sharing requirements of the proposed rule. However, the licensee or other entity would not have information about the individual's activities during the period of the interruption, so the proposed rule's requirements for an authorization update would focus on gathering and evaluating information from the interruption period. For example, in the case of an individual whose last period of authorization ended 2 years ago, the licensee or other entity would focus on gathering information about the individual's activities within the 2-year interruption period. If an individual's last period of authorization ended 13 months ago, the licensee or other entity would focus on gathering information about the individual's activities within those 13 months.

Proposed § 26.57(a), like proposed § 26.55(a), would require the licensee or other entity, before granting authorization, to: (1) Obtain and review a self-disclosure in accordance with the applicable requirements of proposed § 26.61; (2) complete a suitable inquiry in accordance with the applicable requirements of proposed § 26.63; (3) ensure that the individual is subject to pre-access drug and alcohol testing in accordance with the applicable requirements of proposed § 26.65; and (4) ensure that the individual is subject to random drug and alcohol testing in accordance with the applicable requirements of proposed § 26.67. However, proposed § 26.61(c)(3)(iii) would limit the period of time to be addressed in the self-disclosure and employment history to the interruption period. That is, if an individual's last period of authorization ended 2 years ago, the self-disclosure and employment history would cover only the past 2 years. Similarly, proposed § 26.63(f)(2) would provide that the suitable inquiry for an authorization update must cover the interruption period. The proposed rule would require only that the interruption period must be addressed in the self-disclosure, employment history, and suitable inquiry because the licensee or other entity would obtain information from earlier periods in the individual's history from the licensee or other entity who had last granted authorization to the individual.

Proposed § 26.57(b) would be added to specify that if potentially disqualifying FFD information is disclosed or discovered about the individual who is applying for authorization, the licensee or other entity may not grant authorization to the individual, except in accordance with proposed § 26.69.

Section 26.59 Authorization reinstatement

A new § 26.59 [Authorization reinstatement] would establish two categories of authorization reinstatement requirements for individuals whose authorization has been interrupted for a short period and whose last period of authorization was terminated favorably, for the reasons discussed in Section IV. C. One category of authorization reinstatement requirements would apply to individuals whose authorization has been interrupted for more than 30 days but no more than 365 days in proposed § 26.59(a), and the other to individuals whose authorization has been interrupted for 30 or fewer days in proposed § 26.59(c). The proposed steps for reinstating an individual's authorization after an interruption of 365 or fewer days would be less stringent than those required for initial authorization or an authorization update because these individuals have a recent, positive track record within the industry and so would pose little risk to public health and safety or the common defense and security.

The proposed requirements that are related to an individual whose authorization has been interrupted for more than 30 days but no more than 365 days would be more extensive than the requirements for granting authorization to an individual whose authorization has been interrupted for 30 or fewer days. The proposed requirements for the 31–365 day category would be consistent with those contained in the access authorization orders issued by the NRC to nuclear power plant licensees dated January 7, 2003. However, the proposed requirements for individuals whose authorization has been interrupted for 30 or fewer days

would be more stringent than those contained in the access authorization orders issued by the NRC to nuclear power plant licensees dated January 7, 2003. Under the access authorization orders, licensees are required to obtain and review a self-disclosure and employment history from the applicant before reinstating the individual's authorization. Under the proposed rule, licensees and other entities would also be required to subject the individual to the possibility of being selected for pre-access testing in accordance with proposed § 26.65(e) [Authorization reinstatement after an interruption of 30 days or less]. The NRC has determined that this additional proposed requirement is necessary to meet the proposed rule's performance objective of providing reasonable assurance that individuals are trustworthy and reliable, as discussed with respect to proposed § 26.23(a), by extending the deterrent effect of pre-access testing to individuals who have had an interruption in authorization of 30 or fewer days in length.

For individuals whose authorization has been interrupted for 31–365 days, proposed § 26.59(a)(1) would require the licensee or other entity to obtain and review a self-disclosure and employment history in order to reinstate authorization. Consistent with the requirements for authorization updates in proposed § 26.57, the proposed rule in § 26.61(c)(3)(iii) would limit the period of time to be addressed in the self-disclosure and employment history to the period of the interruption in authorization. A self-disclosure and employment history for earlier periods of time would be unnecessary because the granting licensee or other entity would have access to information about the individual from the licensee or other entity who had recently terminated the individual's authorization.

By contrast to the proposed requirements for an initial authorization and an authorization update, proposed § 26.59(a)(2) would permit the licensee or other entity to reinstate an individual's authorization without first completing the suitable inquiry. The proposed rule would permit the licensee or other entity to reinstate the individual's authorization before completing the suitable inquiry because these individuals have a recent, positive track record within the industry and would pose little risk to public health and safety or the common defense and security. As would be required for an authorization update, the proposed rule would limit the period of time to be addressed by the suitable inquiry to the interruption period in proposed § 26.63(f)(3). However, the proposed paragraph would require licensees and other entities to ensure that the suitable inquiry is completed within 5 days after reinstating the individual's authorization. If the suitable inquiry is not completed within the 5-day period permitted, the proposed rule would permit the licensee or other entity to maintain the individual's authorization for up to 10 days following the day upon which authorization was reinstated, but only if the licensee or other entity is unaware of any potentially disqualifying information about the individual. If the suitable inquiry is not completed within the 10 days permitted, the proposed rule would require the licensee or other entity to administratively withdraw the individual's authorization until the suitable inquiry is completed.

Proposed § 26.59(a)(3) and (a)(4) would require the licensee or other entity to ensure that the individual whose authorization has been interrupted for 31–365 days is subject to pre-access drug and alcohol testing and random testing, respectively. Proposed § 26.65(d) [Authorization reinstatement after an interruption of more than 30 days] would establish pre-access drug and alcohol testing requirements for authorization reinstatements. Proposed § 26.67 [Random drug and alcohol testing of individuals who have applied for authorization] would specify the requirements for random testing of individuals who are applying for an authorization reinstatement.

Proposed § 26.59(b) would be added to ensure that any administrative withdrawal of authorization that would be required under proposed § 26.59(a)(2) would not be reported or recorded as an unfavorable termination of authorization, unless and until the suitable inquiry is completed and it indicates that authorization should not be granted. This proposed provision would ensure that an individual's temporary administrative withdrawal of authorization, caused by a delay in completing the suitable inquiry, would not be treated as an unfavorable termination caused by an FFD violation. This proposed provision would be necessary to meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26, by ensuring that they are not subject to any adverse consequences for the licensee's or other entity's delay in completing the suitable inquiry.

Proposed § 26.59(c) would establish authorization requirements for individuals whose authorization has been interrupted for 30 or fewer days. Proposed § 26.59(c)(1) would require the licensee or other entity to obtain and review a self-disclosure from the applicant for authorization with certain exceptions that would be specified in proposed § 26.61 [Self-disclosure and employment history]. The licensee or other entity would be permitted to forego conducting a suitable inquiry for individuals whose authorization has been interrupted for such a short period. Proposed § 26.59(c)(2) would permit licensees and other entities also to forego pre-access drug and alcohol testing of individuals whose authorization has been interrupted for 5 or fewer days, but pre-access testing may be required under proposed § 26.65(e) for individuals whose authorization has been interrupted for 6–30 days. Exceptions to the self-disclosure and pre-access testing requirements in this proposed paragraph would be specified in proposed §§ 26.61 and 26.65, respectively.

Section 26.61 Self-Disclosure and Employment History

A new § 26.61 [Self-disclosure and employment history] would replace current § 26.27(a)(1) for the reasons discussed in Section IV.C. The proposed rule would replace the term, ''written statement,'' in the current rule with the phrase,'' self-disclosure and employment history,'' to more accurately characterize the requirement. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.61(a) would be added to require licensees and other entities to obtain a written self-disclosure and employment history from every applicant before granting authorization to the individual, except in two circumstances, as follows:

Proposed § 26.61(a)(1) would permit the licensee or other entity to forego obtaining a self-disclosure and employment history, if all three of the following conditions are met: (1) The individual previously held authorization under Part 26; (2) the individual's last period of authorization was terminated favorably; and (3) the individual was subject to a behavioral observation and arrest-reporting program that meets the requirements of this part throughout the time interval during which the individual's authorization was interrupted. The information to be obtained from the self-disclosure and employment history would be unnecessary in these circumstances, because it would already be available to the granting licensee or

other entity from the Part 26 program that had been implementing the behavioral observation and arrest-reporting program during the interruption in the individual's authorization. A requirement for licensees and other entities to conduct another suitable inquiry would be redundant and impose an unnecessary burden.

Proposed § 26.61(a)(2) would permit licensees and other entities to forego obtaining an employment history from applicants for an authorization reinstatement whose authorization has been interrupted for 30 or fewer days. The employment history information would be unnecessary in this case, because the proposed rule would not require licensees or other entities to conduct a suitable inquiry for individuals who have had such a short break in authorization.

Proposed § 26.61(b) would be added to specify the required content of the self-disclosure. Affirmative responses to any of the questions in proposed § 26.61(b)(1) would be considered potentially disqualifying FFD information, as defined in proposed § 26.5 [Definitions]. The proposed rule would expand the scope of the questions to be asked from those required in current § 26.27(a)(1) in order to provide greater assurance that individuals would disclose information with regard to indicators of an active substance abuse problem or an increased risk of recidivism into an active substance abuse problem after treatment. Current § 26.27(a)(2) requires information about whether the applicant ''tested positive for drugs or use of alcohol that resulted in on-duty impairment.'' Proposed § 26.61(b)(1) would require information about whether the applicant used, sold, or possessed illegal drugs, subverted or attempted to subvert a drug or alcohol testing program, or refused to take a drug or alcohol test. Both current § 26.27(a)(2) and proposed § 26.61(b)(1) require information on whether the applicant has been subject to a plan for substance abuse treatment (except for a self-referral). Both require information about previous denials or terminations of authorization.

Proposed § 26.61(b)(2) would be added to require the applicant to disclose the circumstances surrounding any potentially disqualifying FFD information and the resolution of the matter. For example, proposed § 26.61(b)(1) would require an applicant to report an arrest on drug-related charges, while proposed § 26.61(b)(2) would require the applicant to report the outcome of the arrest (e.g., charges, a conviction, a finding of not guilty, the dropping of the charges).

Proposed § 26.61(b)(3) would define the time period to be addressed in the self-disclosure. The proposed rule would establish a time limit on the number of years in the past that an individual would be required to report and account for potentially disqualifying FFD information. One purpose of the self-disclosure is to identify indicators of an active substance abuse problem or an increased risk of recidivism into an active substance abuse problem after treatment. The relevant research literature indicates that there is a decrease in post-treatment recidivism (i.e., relapse) rates after 3 years of no further substance abuse, and a larger decrease in the recidivism rate after 5 years. If no indicators of a substance abuse problem within the past 5 years are disclosed (or since the applicant's eighteenth birthday in the case of an applicant who is less than 23 years of age), an applicant for initial authorization (see proposed § 26.55) would not be required to disclose earlier substance-abuse-related events. For applicants who held authorization within the past 3 years, the self-disclosure would address only the time interval since the individual's last period of authorization ended. However, the licensee or other entity would obtain further information about the applicant over the past 5 years from reviewing the information made available by licensees or other entities who had granted authorization to the applicant in the past. This information would include information developed as part of previous suitable inquiries (see proposed § 26.63) as well as information from the period(s) during which the individual was subject to other Part 26 programs.

Proposed § 26.61(c) would be added to require applicants to provide information about current and past employers, which the licensee or other entity would then use for the suitable inquiry, if a suitable inquiry is required under proposed § 26.63 [Suitable inquiry].

Proposed § 26.61(d) would replace and expand upon current § 26.27(a)(4). The proposed rule would add falsification of the self-disclosure or employment history as sufficient reasons to deny authorization to an individual in order to deter falsification attempts. Reference to temporary access authorization would be deleted from the proposed paragraph because temporary access authorization would no longer be permitted under Part 26, for the reasons discussed in Section IV.C.

Section 26.63 Suitable Inquiry

A new § 26.63 [Suitable inquiry] would amend current § 26.27(a)(2) and the requirements related to conducting a suitable inquiry that are contained within the definition of the term, ''suitable inquiry,'' in current § 26.3 [Definitions]. The current rule defines a suitable inquiry as a ''best-effort verification of employment history for the past 5 years, but in no case less than 3 years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR Part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy.'' In general, the proposed changes to the current requirements are intended to: (1) Better focus the suitable inquiry on indicators of an active substance problem and/or an increased risk of recidivism into an active substance abuse problem following treatment, as discussed in Section IV.C; (2) increase the consistency in implementing suitable inquiries among FFD programs by providing more detailed requirements, also as discussed in Section IV.C; and (3) improve Part 26 by eliminating or modifying unnecessary requirements, which is Goal 5 of this rulemaking, as discussed in Section IV.B.

For all authorization categories, the suitable inquiry would be more thorough than previous industry practices, in order to increase the likelihood that potentially disqualifying FFD information would be identified, if it existed, and to provide reasonable assurance that individuals are trustworthy and reliable, as demonstrated by avoiding substance abuse. For individuals who have established a recent, favorable work history under Part 26, as demonstrated by having held authorization that was terminated favorably within the past 3 years, the period of time addressed in the suitable inquiry would be reduced from the past 5 years in every case, to the past 3 years or less, depending upon how recently the applicant held authorization. If potentially disqualifying FFD information within the past 5 years is identified regarding an applicant and the information has not been addressed and favorably resolved by a previous licensee or other entity, the suitable inquiry requirements would be more extensive, as described in proposed § 26.69 [Authorization with

potentially disqualifying fitness-for-duty information].

Proposed § 26.63(a) would be added to require licensees and other entities to conduct a suitable inquiry for two purposes. One purpose would be to verify the information provided by the applicant in the self-disclosure and employment history obtained under proposed § 26.61. The second purpose would be to determine whether additional potentially disqualifying FFD information is available regarding the applicant. The proposed paragraph would also establish the circumstances in which a licensee or other entity would be permitted to forego the suitable inquiry in order to grant authorization to individuals. A licensee or other entity would be permitted to forego the suitable inquiry if all three of the following conditions are met: (1) The individual previously held authorization under Part 26; (2) the individual's last period of authorization was terminated favorably; and (3) the individual was subject to a behavioral observation and arrest-reporting program that meets the requirements of this part throughout the period during which the individual's authorization was interrupted. The information to be obtained from a suitable inquiry would be unnecessary in these circumstances, because it would already be available to the granting licensee or other entity from the Part 26 program that implemented the behavioral observation and arrest-reporting program during the interruption in authorization.

Proposed § 26.63(b) would be added to permit licensees and other entities to rely upon suitable inquiry information that was gathered by previous licensees and other entities who are subject to this part. This proposed provision would reduce the number of redundant suitable inquiries that licensees and other entities must conduct, when the suitable inquiries would address the same employers and same time periods. The proposed paragraph would also permit licensees and other entities to accept the results of any determinations of fitness that were performed under a previous Part 26 program, rather than requiring each new licensee and other entity to reevaluate the same information that was reviewed and resolved in accordance with the same requirements under another Part 26 program. This proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.63(c) would be added to specify requirements for the manner in which licensees and other entities must conduct the suitable inquiry. Licensees and other entities would be required to demonstrate a ''best effort'' to complete the suitable inquiry. The ''best effort'' criterion recognizes licensees' and other entities' status as commercial entities with no legal authority to require the release of the information from other private employers and educational institutions. Because of privacy and potential litigation concerns, some private employers and educational institutions may be unable or unwilling to release qualitative information about a former employee or student. For example, a former employer may verify the dates that an individual was employed by the company, but may be unwilling to reveal that the individual had been in treatment for drug or alcohol abuse while employed with the company. Therefore, the ''best effort'' criterion would require licensees and other entities to seek suitable inquiry information from the primary source (e.g., a company, private employer, or educational institution that the applicant has listed on his or her employment history), but recognizes that it may not be forthcoming. The ''best effort'' criterion in the proposed paragraph would be consistent with the ''best-efforts basis'' in current § 26.27(a)(2), but the proposed rule would provide more detailed requirements in response to questions that the NRC has received from licensees about implementing a suitable inquiry on a ''best effort'' basis since Part 26 was first promulgated.

Proposed § 26.63(c)(1) would be added to specify the type of information that the licensee or other entity must seek from employers regarding the applicant for authorization. The proposed paragraph would require the licensee or other entity to ascertain the reason that the individual's employment was terminated, his or her eligibility for rehire, and other information that could reflect on the individual's fitness to be granted authorization. The proposed requirement to obtain this information would be consistent with long-standing industry practices related to granting access authorization and related requirements in the access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

Proposed § 26.63(c)(2) would specify the type of information that licensees and other entities must seek when an applicant's claimed periods of employment include military service. The proposed requirement would be added for consistency with related requirements in the access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

Proposed § 26.63(c)(3) also would be added to provide consistency with related requirements in the access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003. The proposed paragraph would address circumstances in which a primary source of information refuses to provide the necessary suitable inquiry information or indicates an inability or unwillingness to provide it within 3 days of the request. Licensees and other entities would be required to document that the request for information was directed to the primary source and the nature of the response (*i.e.*, a refusal, inability, or unwillingness). If a licensee or other entity encounters the circumstances addressed in proposed § 26.63(c)(3), the proposed paragraph would require the licensee or other entity to seek suitable inquiry information from an alternate source, to the extent of the alternate source's ability to provide the information. An alternate source may include, but would not be limited to, a co-worker or supervisor at the same company who had personal knowledge of the applicant, if such an individual could be located. However, the proposed rule would prohibit the licensee or other entity from using the alternate source of suitable inquiry information to meet any other access authorization requirements for a character reference. The proposed rule would permit licensees and other entities to grant authorization, if warranted, when a response has been obtained from an alternate source, without waiting more than 3 days after the request for information was directed to a primary source. These proposed alternative methods of meeting the suitable inquiry requirement are necessary because, as discussed with respect to proposed § 26.63(c), some employers are unwilling or unable to provide suitable inquiry information.

Proposed § 26.63(d) would be added to require licensees and other entities who are subject to this part to share suitable inquiry information that they have collected when contacted by another licensee or entity who has a release that would permit the sharing of that information signed by the applicant for authorization. This proposed provision would restate the permission to release suitable inquiry information in current § 26.29(b) as a requirement that licensees and other entities must

share the information necessary to conduct the suitable inquiry. The proposed provision would also clarify that the information must also be released to C/Vs who have licensee-approved FFD programs when the C/V presents the required signed release from the applicant. This proposed clarification is necessary because some licensees have misinterpreted current § 26.29(b) as prohibiting the release of suitable inquiry information to C/Vs who have licensee-approved FFD programs. The proposed paragraph would also permit a licensee or other entity to deny authorization to an individual if the individual will not sign the release necessary to permit the licensee or other entity to conduct the suitable inquiry. The proposed provisions would be consistent with access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

Proposed § 26.63(e) would be added to permit licensees and other entities to use electronic means of obtaining the suitable inquiry information. This proposed permission would be consistent with access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003. The proposed paragraph would also add cross-references to the applicable records retention requirements in proposed § 26.211 [General provisions] and proposed § 26.213 [Recordkeeping requirements for licensees and other entities] in proposed Subpart J [Recordkeeping and Reporting Requirements] to ensure that licensees and other entities are aware of the applicability of these requirements to the suitable inquiry information obtained electronically. The proposed change would be consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.63(f) would be added specify the period(s) of time that the suitable inquiry must address for applicants for initial authorization, authorization update, and authorization reinstatement. The proposed paragraph would also specify additional requirements for conducting the suitable inquiry for these authorization categories, as follows:

Proposed § 26.63(f)(1) [Initial authorization] would require licensees and other entities to conduct a suitable inquiry to address the 3-year period preceding the date upon which the individual applies for authorization. The period of time to be addressed in the suitable inquiry for applicants for initial authorization who do not disclose any potentially disqualifying FFD information would be reduced from 5 years in the current regulation to 3 years for two reasons: First, one purpose of the suitable inquiry is to identify indicators of an active substance abuse problem or an increased risk of recidivism following treatment. Therefore, if no potentially disqualifying FFD information is disclosed by an applicant for initial authorization from the past 5 years and none is identified through the suitable inquiry or other means, it is unlikely that the applicant has an active substance abuse problem. Therefore, seeking a full 5 years of information about the individual would unlikely provide useful information and imposes an unnecessary burden. Second, industry experience has shown that employers are often reluctant to disclose adverse information to other private employers about former employees, and that the longer it has been since an individual was employed, the less likely it is that a former employer will disclose useful information. Therefore, rather than retaining the requirement for a 5-year suitable inquiry in all cases, the proposed rule would increase the thoroughness of the suitable inquiry into the past 3 years.

Proposed § 26.63(f)(1) would be added to require the licensee or other entity to conduct the suitable inquiry with every employer by whom the applicant claims to have been employed within the past year. This proposed requirement to conduct the suitable inquiry with every claimed employer would be a more rigorous suitable inquiry than was common industry practice prior to issuance of the January 7, 2003, access authorization orders, which imposed additional compensatory measures related to access authorization. The purpose of contacting every employer would be to ensure that the licensee or other entity sought information related to any active substance abuse problem. For the earlier 2 years of the suitable inquiry period, the proposed paragraph would require the licensee or other entity to conduct the suitable inquiry with every employer by whom the applicant claims to have been employed the longest within each calendar month. Contacting these employers would increase the likelihood that the employers would have knowledge of the applicant and so may provide more useful information than contacting employers by whom the applicant was employed only briefly.

Proposed § 26.63(f)(2) [Authorization update] would be added to specify the period of time that the suitable inquiry must address for applicants for an authorization update (*i.e.*, those who held authorization within the past 3 years and whose last period of authorization was terminated favorably, but who have not held authorization within the past year). The proposed paragraph would require the licensee or other entity to conduct the suitable inquiry in the same manner as described in proposed § 26.63(f)(1). However, for an authorization update, the suitable inquiry would address only the period that the individual's authorization was interrupted, rather than the full 3 years that would be required for initial authorization. A 3-year period for the suitable inquiry would be unnecessary for these individuals, because the licensee or other entity would have access to the information about the individual that was gathered by the licensee or other entity under whose program the individual had been granted and successfully maintained authorization within the past 3 years.

Proposed § 26.63(f)(3) [Authorization reinstatement after an interruption of more than 30 days] would specify the period of time that the suitable inquiry must address for applicants who held authorization within the past year and whose last period of authorization was terminated favorably, but who have not held authorization within the past 30 days. The proposed rule would require licensees and other entities to contact employers by whom the applicant claims to have been employed the longest in each calendar month of the interruption. The proposed rule would not require licensees and other entities to contact every employer by whom the individual claimed to have been employed during the interruption for the reasons discussed with respect to proposed § 26.59(a)(2). Because these individuals have had only a short break in authorization, a sampling of employers from the interruption period would be sufficient to determine whether any indications exist that the individual had developed a previously undetected substance abuse or other problem that would adversely affect his or her fitness to have authorization reinstated.

The time periods and approach to conducting the suitable inquiry established in proposed § 26.63(f)(1)–(f)(3) would be consistent with those established in the access authorization orders issued to nuclear power plant licensees dated January 7, 2003.

Section 26.65 Pre-Access Drug and Alcohol Testing

Proposed § 26.65 [Pre-access drug and alcohol testing] would amend current § 26.24(a)(1), which requires drug and alcohol ''testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities within the scope of this part.'' The proposed section would amend the current pre-access drug and alcohol testing requirement for individuals who are seeking authorization under Part 26 to strengthen the effectiveness of FFD programs, as discussed in Section IV. C.

Proposed § 26.65(a) [Purpose] would be added to describe the purpose of the section and identify the individuals to whom the requirements in the proposed section would apply. The pre-access testing requirements in this section would cover applicants for authorization (1) who have never held authorization under Part 26 or have held authorization under Part 26 and whose most recent period of authorization was terminated favorably, and (2) about whom no potentially disqualifying FFD information has been discovered or disclosed that was not reviewed and favorably resolved by another licensee or entity. Requirements for granting authorization to individuals whose previous periods of authorization were terminated unfavorably or denied, or about whom new potentially disqualifying FFD information has been discovered or disclosed, would be contained in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information].

Proposed § 26.65(b) [Accepting tests conducted within the past 30 days] would be added to permit licensees and other entities to forego pre-access testing of an individual who has negative test results from drug and alcohol tests that were performed in accordance with the requirements of Part 26 within the 30-day period before the licensee or other entity grants authorization to the individual, including tests that were conducted before the individual applied for authorization from the licensee or other entity. For example, if an individual was subject to random testing under another Part 26 program and was selected for testing under the other program before applying for authorization from the granting licensee or other entity: the proposed rule would permit the granting licensee or other entity to accept negative test results from the random test in lieu of performing a pre-access test, if the random test was conducted within 30 days before the day upon which authorization is granted to the individual. A requirement for the licensee or other entity to conduct pre-access testing in these circumstances would be redundant and unnecessary.

Proposed 26.65(c) [Initial authorization and authorization update] would be added to establish pre-access testing requirements for individuals who are applying for initial authorization and an authorization update. The proposed rule would require negative results from pre-access testing before the licensee or other entity could grant authorization to the individual, except in the two circumstances described in proposed § 26.65(c)(1) and (c)(2). In proposed § 26.65(c)(1), licensees and other entities would be permitted to forego pre-access testing if the applicant had been subject to drug and alcohol testing (including random testing), behavioral observation, and arrest-reporting requirements under a Part 26 FFD program throughout the period during which the individual's authorization was interrupted. In proposed § 26.65(c)(2), licensees and other entities would be permitted to forego pre-access testing of an applicant who had negative test results from Part 26 drug and alcohol tests that were performed within the past 30 days and was subject to behavioral observation and arrest-reporting requirements during the time interval between the day upon which the specimens were collected and the day the licensee or other entity grants authorization to the individual. Pre-access testing in these two circumstances would be unnecessary because there would be sufficient opportunity to detect substance abuse without it.

Proposed paragraphs § 26.65(d) [Authorization reinstatement after an interruption of more than 30 days] and (e) [Authorization reinstatement after an interruption of 30 days or fewer] would be added to establish requirements for pre-access testing of individuals who are applying for an authorization reinstatement. The proposed requirements for pre-access testing of these individuals would be less stringent than the requirements for initial authorization and an authorization update. The proposed provision would also relax the pre-access testing requirements in current § 26.24(a)(1), which require all applicants for authorization to be subject to pre-access testing within 60 days before granting authorization. Less stringent pre-access testing requirements would be appropriate because these individuals have (1) met the rigorous criteria for initial authorization; (2) established a recent record of successfully maintaining authorization under Part 26; and (3) had only a short break in authorization.

Proposed § 26.65(d) would specify pre-access testing requirements for individuals whose authorization has been interrupted for more than 31 days but no more than one year. Proposed § 26.65(d)(1)(i) would require the licensee or other entity to administer an alcohol test and collect a urine specimen for drug testing. The licensee or other entity would be permitted to reinstate the individual's authorization if the alcohol test results are negative, before the drug test results are available. Proposed § 26.65(d)(1)(ii) would permit the licensee or other entity to maintain the individual's authorization for 5 days after reinstatement without receiving the drug test results. But, if the licensee or other entity does not receive negative drug test results within 5 days of reinstating the individual's authorization, the proposed rule would require the licensee or other entity to administratively withdraw the individual's authorization until negative drug test results are received. These proposed requirements would ensure that individuals whose authorization has been interrupted for more than 30 days are subject to pre-access drug and alcohol testing to deter substance abuse and to detect any current substance abuse problem. However, the proposed provisions would not unduly delay authorization reinstatement, given that these individuals' recent successful histories of maintaining authorization under Part 26 indicates that they are at low risk of engaging in substance abuse. Proposed § 26.65(d)(2) would permit licensees and other entities to forego pre-access testing of these applicants for reinstatement in the circumstances discussed with respect to proposed § 26.65(c)(1) and (c)(2).

Proposed § 26.65(e)(1) would be added to permit licensees and other entities to forego pre-access testing of applicants whose authorization has been interrupted for 5 or fewer days. This proposed provision would be consistent with current licensee practices and recommendations regarding ''short breaks'' in authorization in NUREG–1385 and other access authorization requirements.

However, proposed § 26.65(e)(2) would require licensees and other entities to subject applicants whose authorization has been interrupted for 6–30 days to the possibility of being selected for pre-access testing in order to deter any potential for substance abuse. Proposed § 26.65(e)(2)(i) would require the licensee or other entity to subject the applicant to a one-time

chance of being selected for testing at a probability of approximately 4 percent. This proposed probability approximates the likelihood that individuals who are subject to random testing at the 50 percent annual testing rate in proposed § 26.31(d)(2)(vi) would be selected for testing at some point within a 30-day period. Proposed § 26.65(e)(2)(ii) would clarify that, if an applicant is not selected for pre-access testing under the preceding paragraph, the licensee or other entity would not be required to perform a pre-access test. Proposed § 26.65(e)(2)(iii)(A) and (B) would specify requirements for conducting the pre-access testing, should an individual be selected for testing under proposed § 26.65(e)(2)(i). The licensee or other entity would complete an alcohol test and collect a specimen for drug testing before reinstating the individual's authorization. In order to maintain the individual's reinstated authorization, the proposed rule would require that the licensee or other entity must receive negative drug test results within 5 days after reinstatement or administratively withdraw the individual's authorization until negative drug test results are received. However, proposed § 26.65(e)(3) would permit licensees and other entities to forego subjecting an individual to the possibility of being selected for pre-access testing, if the applicant had been subject to the drug and alcohol testing (including random testing), behavioral observation, and arrest-reporting elements of a Part 26 FFD program throughout the interruption in the individual's authorization; because being subject to these program elements during the interruption period would be sufficient to deter substance abuse and provide assurance that substance abuse would be detected. Proposed § 26.65 would enhance the deterrent effect of pre-access testing for individuals who have had a very short break in authorization, without imposing the burden of requiring that every individual must be tested.

Proposed § 26.65(f) [Time period for testing] would be added to require that specimens that are collected for any pre-access testing required in this proposed section must be collected within the 30-day period preceding the day upon which the licensee grants authorization to an individual. Under current § 26.24(a)(1), licensees and other entities are permitted to complete pre-access testing within the 60-day period before authorization is granted. The shorter time period within which pre-access testing must be conducted, if required, in the proposed rule would increase the likelihood of detecting an active substance abuse problem among applicants for unescorted access to nuclear power plants and others who are subject to Part 26 by increasing the number of pre-access tests that would be performed. In addition, the decreased time period for pre-access testing would increase the likelihood that recent drug use, particularly marijuana, would be detected before the concentration of metabolites in an individual's body could decrease below the cutoff levels prescribed in the proposed rule. The decreased time period within which pre-access testing must be performed in the proposed rule would provide higher assurance that individuals subject to this part are trustworthy and reliable, as demonstrated by the avoidance of substance abuse, as discussed with respect to proposed § 26.23(a).

Proposed § 26.65(g) [Administrative withdrawal of authorization] would be added to ensure that the licensee or other entity does not record or report as an unfavorable termination any administrative withdrawal of authorization that may be required under proposed paragraphs (d)(1)(ii) or (e)(2)(iii)(B) of this proposed section. The point in time at which a licensee or other entity receives drug test results would not be under the control of the applicant and would not reflect upon the applicant's fitness, trustworthiness, or reliability, if the licensee or other entity is unable to obtain drug test results within the 5 days permitted and must administratively withdraw the individual's authorization. Therefore, subjecting the individual to the severe consequences associated with a record of an unfavorable termination would be inappropriate. Should the drug test results be non-negative and the licensee or other entity terminates the individual's authorization for cause, however, the termination would then be recorded as unfavorable.

Proposed § 26.65(h) [Sanctions for a confirmed non-negative pre-access test result] would be added to specify the minimum sanctions to be imposed on an individual whose pre-access test results are confirmed by the MRO as an FFD policy violation. Proposed § 26.65(h)(1) and (h)(2) would cross-reference the relevant sanctions specified in proposed Subpart D [Management Actions and Sanctions] to clarify that those sanctions would apply to applicants for authorization. For example, if the MRO determines that an individual has submitted an adulterated urine specimen for a pre-access drug test, the licensee or other entity would be required to impose the sanction for an attempt to subvert the testing process (*i.e.*, permanent denial of authorization) in proposed § 26.75(b).

Proposed § 26.65(h)(3) would be added to permit licensees and other entities to grant authorization to an individual whose confirmed non-negative test result is a first drug- or alcohol-related violation under a Part 26 program, consistent with current § 26.27(b)(2). However, the proposed rule would permit authorization to be granted only in accordance with the stringent requirements contained in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information].

Section 26.67 Random Drug and Alcohol Testing of Individuals Who Have Applied for Authorization

A new § 26.67 [Random drug and alcohol testing of individuals who have applied for authorization] would be added to extend current random testing requirements to individuals who have applied for authorization under Part 26 but to whom authorization has not yet been granted. The requirements contained the proposed section would be added to the access authorization requirements that were established by orders to nuclear power plant licensees dated January 7, 2003, for two reasons: (1) To enhance the effectiveness of FFD programs by increasing the likelihood that substance abuse would be detected before authorization is granted, and (2) to deter the potential for substance abuse among applicants.

A new § 26.67(a) would require licensees and other entities to conduct random testing of applicants in accordance with the requirements of proposed § 26.31(d)(2). That is, the licensee or other entity would add applicants to the FFD program's normal population of individuals who are subject to random testing, select individuals for testing at the 50 percent annual rate, and otherwise subject applicants to the same random testing requirements as individuals who currently hold authorization under Part 26. An applicant would be subject to random testing beginning when the licensee or other entity collects the specimens for any required pre-access test, and continuing thereafter, if the licensee or other entity grants authorization to the individual.

Licensees and other entities would be permitted to forego random testing of applicants in the two circumstances described in proposed § 26.67(a)(1) and (a)(2). Proposed § 26.67(a)(1) would permit a licensee or other entity to discontinue random testing of any applicant to whom the licensee or other entity does not grant authorization for

any reason, including a termination or denial of authorization or a withdrawal of the application for authorization by the individual or the individual's employer, in the case of a C/V. Proposed § 26.67(a)(2) would address the circumstance described in proposed § 26.65(b), in which the licensee or other entity is permitted to meet pre-access testing requirements by relying upon negative test results from specimens collected under another Part 26 program within 30 days before granting authorization to the individual. Under proposed § 26.67(a)(2), the licensee or other entity would begin subjecting the applicant to random testing when the licensee or other entity takes the first formal action to process the individual's application for authorization. The actions may include, but are not limited to, the point in time at which the licensee or other entity receives the individual's signed consent form and begins creating a record of the individual's application that would be accessible to other licensees and entities; conducts a psychological evaluation; begins a suitable inquiry; or takes other actions that are required under NRC regulations to grant authorization. The first formal action that the licensee or other entity takes to process an individual's application for authorization will vary, depending upon the licensee's FFD and access authorization program procedures, whether the applicant's FFD training is up-to-date, and other factors, which, together, make it impractical to establish in the proposed rule a single point in the authorization process at which random testing must begin. Therefore, the proposed paragraph would require the licensee or other entity to begin subjecting the individual to random testing when the licensee or other entity takes the first formal action, but would not define a specific formal action that would initiate random testing of applicants in all cases.

Proposed § 26.67(b) would be added to permit licensees and other entities to grant authorization to an individual before random testing is completed, if the individual has met all of the requirements for authorization but has been selected for one or more random tests while in applicant status. That is, if the applicant has met all other applicable requirements for authorization, licensees and other entities need not delay granting authorization to the individual in order to conduct and obtain the results from a random test, if the applicant was selected for random testing while in applicant status. The proposed rule would not require the testing to be completed before the licensee or other entity grants authorization to the individual because the primary purpose of random testing of applicants would be to deter substance abuse rather than to provide information for the authorization decision. Pre-access testing provides the necessary information for authorization decision-making.

Proposed § 26.67(c) would cross-reference the minimum sanctions to be imposed on an individual whose drug or alcohol test results from random testing are confirmed as non-negative. Proposed § 26.67(c)(1) and (c)(2) would refer to the relevant sanctions specified in proposed Subpart D. Proposed § 26.67(c)(3) would continue to permit licensees and other entities to grant authorization to an individual whose confirmed non-negative test result is a first drug- or alcohol-related violation under a Part 26 program, consistent with current § 26.27(b)(2), but the proposed rule would permit authorization to be granted only in accordance with the stringent requirements contained in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information].

Section 26.69 Authorization With Potentially Disqualifying Fitness-for-Duty Information

A new § 26.69 [Authorization with potentially disqualifying fitness-for-duty information] would replace and clarify the existing requirements contained in § 26.27(b)(4), which establishes requirements for granting authorization to an individual who has violated an FFD policy and had his or her authorization terminated unfavorably or denied for a period of 3 or 5 years under the current rule. Consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, the proposed section would be added to address problems that have arisen in implementing the current rule and clarify the NRC's intent with respect to several situations that are not addressed in the current rule.

Proposed § 26.69(a) [Purpose] would be added to describe the purpose of the section and the applicants to whom the requirements in the proposed section would apply. The proposed rule would require licensees and other entities to meet the applicable requirements in this section before granting authorization to an individual or permitting an individual to maintain his or her authorization when potentially disqualifying FFD information is obtained about an individual through any means and the information has not been assessed and favorably resolved by a previous licensee or other entity. Proposed § 26.63(b) would permit licensees and other entities to rely upon the results of determinations of fitness that were conducted by previous licensees or other entities, rather than requiring each new licensee or other entity to reevaluate the same information that was reviewed and resolved under another Part 26 program. However, if the potentially disqualifying FFD information was not previously reviewed and favorably resolved under another Part 26 program, licensees and other entities would implement the requirements contained in this proposed section.

The proposed paragraph would also revise the language contained in current § 26.27(b)(2) to recognize that licensees and other entities may decide not to grant authorization to the subject individual and so, in that case, would not be required to implement these requirements. At the public meetings discussed in Section V, stakeholders noted that some individuals have misinterpreted the current rule as requiring licensees to provide individuals who have violated an FFD policy with the opportunity to seek treatment for a substance abuse problem and to have authorization reinstated. However, although the NRC continues to affirm that individuals who pursue treatment and maintain sobriety may be considered for authorization, both the current and proposed rules assign the responsibility for making authorization decisions to the licensee or other entity. Therefore, the proposed paragraph would clarify that granting or maintaining the authorization of an individual about whom potentially disqualifying FFD information has been disclosed or discovered is ''at the licensee's or other entity's discretion.''

Proposed § 26.69(b) [Authorization after a first confirmed positive drug or alcohol test result or a 5-year denial of authorization] would be added to define requirements for granting authorization, at the licensee's or other entity's discretion, to an individual who had confirmed positive drug or alcohol test results and whose authorization, as a result, was previously terminated unfavorably or denied for 5 years. The requirements in the proposed paragraph would apply to: (1) An applicant who had a first confirmed positive test result on a pre-access test and was consequently denied authorization by a licensee; (2) an individual who is returning to duty following the 14-day assessment period required in current § 26.26(b)(2), which would be moved to

proposed § 26.75(e)(1); (3) an individual whose authorization was terminated unfavorably under another Part 26 program and who had an interruption in authorization that was longer than 14 days; and (4) an individual whose authorization was denied for 5 years under the requirements of proposed § 26.75(c), (d), (e)(2), or (f). The proposed paragraph would replace and strengthen the requirements contained in current § 26.27(b)(2) and expand them to address confirmed positive alcohol test results, which are excluded from this process in current § 26.27(b)(5). The proposed paragraph would include confirmed positive alcohol test results for the reasons discussed with respect to proposed § 26.75(e).

Proposed § 26.69(b)(1) would require the licensee or other entity to obtain and review a self-disclosure from the applicant to verify that it does not contain any previously undisclosed potentially disqualifying FFD information. Because the individual's last period of authorization was terminated unfavorably or denied, licensees and other entities would not be permitted to forego obtaining a self-disclosure and employment history under any circumstances, because it would be important to review the individual's activities during the interruption period. The period of time to be addressed in the self-disclosure would be the shorter of either the past 5 years or the intervening period since the individual last held authorization.

Proposed § 26.69(b)(2) would increase the scope of the suitable inquiry that the licensee or other entity must conduct by requiring the licensee or other entity to conduct the suitable inquiry with every employer by whom the applicant claims to have been employed during the period of time addressed in the individual's self-disclosure. This extensive suitable inquiry would be necessary to determine whether any indications exist that the individual has continued to engage in substance abuse. The proposed rule would also required licensees and other entities to obtain and review any records that other licensees or entities may have developed related to any potentially disqualifying FFD information about the individual from the past 5 years. These records may include, but would not be limited to, the results of past suitable inquiries or other investigations, records of arrests or convictions, drug and alcohol test results, treatment records, and the results of determinations of fitness. This information would be used by the SAE to assess the individual's fitness and the licensee's or other entity's reviewing official to determine whether authorization is warranted.

Proposed § 26.69(b)(3) would apply only to individuals whose authorization was denied for 5 years under the current rule or in accordance with § 26.75(c), (d), (e)(2), or (f) of the proposed rule. The proposed paragraph would require the licensee or other entity to verify, before granting authorization, that the individual had not abused alcohol or drugs during the 5-year interruption, at a minimum. The proposed requirement would be consistent with the portion of current § 26.27(b)(4) that requires licensees to obtain ''satisfactory medical assurance that the person has abstained from drugs for at least three years.'' However, the proposed rule would extend the requirement to 5 years to ensure that such an individual would be at the lowest risk of recidivism into an active substance abuse problem before the licensee or other entity could grant authorization to the individual.

Proposed § 26.69(b)(4) would amend the requirement in current § 26.27(b)(2), which mandates that an individual who has a first confirmed positive test result must be referred to the EAP for assessment and counseling before the licensee or other entity may grant authorization to the individual. The proposed paragraph would make several changes to the current provision. First, the proposed rule would replace the term, ''management and medical assurance of fitness,'' which is used in current § 26.27(b)(2) and (b)(4), with the term, ''determination of fitness,'' to improve the accuracy of the language in the proposed rule. The proposed rule would not use ''management'' because the licensee's or other entity's reviewing official (see the discussion of proposed § 26.69(c)(3) and the definition of ''reviewing official'' in proposed § 26.5 [Definitions]) is the individual who licensees and other entities currently designate to make authorization decisions and the reviewing official may not be a manager. In addition, the proposed rule would permit professionals other than a licensed physician to conduct a determination of fitness, for the reasons discussed with respect to proposed § 26.189 [Determination of fitness]. Therefore, this proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Consistent with the intent of the current requirement, the proposed paragraph would require the licensee or other entity to ensure that a ''determination of fitness'' is conducted, as defined in proposed § 26.189 [Determination of fitness], as part of the authorization decision. Proposed § 26.187 [Substance abuse expert] would require that determinations of fitness that are conducted for authorization decisions must be performed by an SAE, whose role, responsibilities, and required qualifications would also be defined in proposed § 26.187. Therefore, proposed § 26.69(b)(4) would require that the individual must be referred to an SAE for a determination of fitness, but the proposed rule would not require the SAE to be an EAP employee. Permitting licensees and other entities to rely upon a professional who meets the required qualifications for an SAE, rather than only on EAP personnel, would more appropriately focus this requirement on assuring that the professional who performs the assessment and treatment planning is qualified, rather than on the professional's organizational affiliation.

Proposed § 26.69(b)(4)(i)–(b)(4)(iii) would replace and strengthen the requirement in current § 26.27(b)(2), which states that ''any rehabilitation program deemed appropriate must be initiated during such suspension period.'' The proposed paragraph would require that the individual must be in compliance with or have successfully completed treatment plans, rather than simply started treatment, in order for the licensee or other entity to grant authorization to the individual and maintain the individual's authorization after it has been granted.

Proposed § 26.69(b)(5) would be added to impose more stringent pre-access testing requirements on an individual who is being considered for authorization following an unfavorable termination or denial of authorization than those required for individuals whose last period of authorization was terminated favorably. The proposed paragraph would require negative results from an alcohol test performed within 10 business days before authorization is granted. Similarly, the proposed paragraph would require negative results from a urine specimen that was collected for drug testing within 10 business days before authorization is granted, as well as collection of the urine specimen under direct observation. The proposed paragraph would prohibit the licensee or other entity from granting authorization to the individual before the drug test results are reported to the licensee's or other entity's MRO so that the MRO may determine whether the drug test results indicated that the individual has not engaged in any further drug abuse [see the discussion of proposed § 26.69(f)]. Completing drug and alcohol testing within 10 days

before granting authorization, rather than the 30 days that is permitted in proposed § 26.65(f) [Time period for testing] for the other authorization categories, would provide evidence that the individual has abstained from abusing proscribed substances during the interruption period and that the individual would be able to safely and competently perform duties under this part when authorization is reinstated, if the individual's authorization has been interrupted for the 14-day assessment period required under current § 26.27(b)(2) and retained in proposed § 26.75(e)(1). Requiring direct observation of the urine specimen collection would be necessary to provide added assurance that the specimen is valid and yields accurate drug test results.

Proposed § 26.69(b)(6) would apply only to individuals whose authorization has been unfavorably terminated or denied for at least 14 days for a first confirmed positive drug or alcohol test result. The proposed paragraph would replace the third sentence of current § 26.27(b)(4), which establishes requirements and a schedule for followup drug and alcohol testing for an individual whose authorization was denied for 3 years under the current rule, and apply the requirement for followup testing to individuals who have had a first confirmed positive test result for drugs or alcohol. The proposed requirement would provide greater deterrence of further drug and alcohol use than current § 26.27(b)(4), which requires this followup testing only for the more serious FFD violations that result in a denial of authorization for 3 years or longer. The more stringent requirement would provide higher assurance that individuals who are subject to this part are trustworthy, reliable, and fit for duty.

Proposed § 26.69(b)(6) would amend the current fixed schedule for followup testing by requiring licensees and other entities to subject the individual to the possibility of being selected for followup testing, during any period in which he or she holds authorization under Part 26, for a period of 3 calendar years after the individual's authorization is restored following termination or denial for the first confirmed positive drug or alcohol test result. The proposed rule would require licensees and other entities to ensure that the individual is subject to unannounced testing at least 15 times within the 3-year period and verify that the individual's test results are negative. Either random or followup tests, which are both unannounced, may be used to meet this proposed requirement. The proposed rule would require licensees and other entities to distribute the unannounced tests over the 3-year period, with at least one unannounced test conducted each quarter.

Proposed § 26.69(b)(6)(i)–(b)(6)(iii) would be added to address circumstances in which an individual is not continuously subject to a Part 26 program during the 3 years following restoration of authorization. Proposed § 26.69(b)(6)(i) would require that an individual who intermittently holds authorization over the 3-year period must be subject to unannounced testing at least once in each quarter during which the individual is authorized. Proposed § 26.69(b)(6)(ii) would permit the licensee or other entity to extend the followup testing period to 5 years, if the requirement for 15 tests over the 3-year period has not been met because the individual has not been authorized a sufficient number of times or for sufficient periods of time during the first 3 years to meet the proposed 15-test requirement. Proposed § 26.69(b)(6)(iii) would permit the licensee or other entity to have an SAE conduct a determination of fitness to determine whether further followup testing is required, if an individual is unable to meet the 15-test requirement after 5 years due to brief and infrequent periods of authorization.

These proposed changes to the current followup testing requirements respond to information provided by stakeholders in the public meetings discussed in Section V. Stakeholders reported that some individuals who are subject to followup testing have been unable to satisfy the requirements of current § 26.27(b)(4) because they are not continuously employed in the nuclear industry in job positions that require authorization, and, therefore, are not continuously subject to a Part 26 FFD program. As a result, these individuals have been unable to demonstrate negative test results on tests that are performed ''once every month for four months and at least once every three months for the next two years and eight months after unescorted access is reinstated.'' Stakeholders reported that some individuals have been unable to satisfy the current requirement after 10 years, despite obtaining negative test results on every pre-access, random, and followup test administered during that period, because the individuals were not continuously subject to a Part 26 followup testing program for the required 3-year period. This was not the intent of the current provision. Therefore, the proposed revision to this requirement would increase the flexibility with which licensees and other entities may implement followup testing requirements, but retain the current effectiveness of followup testing in detecting and deterring substance abuse.

Proposed § 26.69(b)(7) would be added to require the licensee or other entity to verify that the results of all drug and alcohol tests that are administered to the individual under a Part 26 program following restoration of the individual's authorization indicate no further drug or alcohol abuse. The proposed paragraph would not specify that the drug test results must be negative, because the metabolites of some drugs, such as marijuana, may be present in an individual's urine for several weeks after the individual has stopped using the drug. If an individual is tested again soon after the original test that resulted in an FFD violation was conducted, the specimen may yield positive results which would not, in fact, reflect new drug use. Therefore, if subsequent drug test results show the presence of the same drug or drug metabolites in the individual's urine as detected in the original confirmed positive test result, the MRO, under proposed § 26.185(o), would be required to determine whether the results indicate new drug use or are consistent with results that would be expected from the drug use that resulted in the previous confirmed positive test result. The proposed rule would add this requirement in response to inconsistencies in the manner in which some MROs have implemented current requirements related to return-to-duty drug testing. Some MROs have been inappropriately reluctant to declare a second drug test result as negative if any concentration of the drug or drug metabolites that resulted in a first confirmed positive drug test result are detected in the specimen. The proposed change would permit an individual who has not engaged in further drug use after a first confirmed positive drug test result to regain authorization, at the licensee's discretion, rather than be incorrectly denied authorization for 5 years on the basis of a subsequent FFD policy violation, under proposed § 26.75(e)(2).

Proposed § 26.69(c) [Granting authorization with other potentially disqualifying FFD information] would be added to establish requirements for granting authorization to an individual about whom potentially disqualifying FFD information is discovered or disclosed that was not a confirmed non-negative drug or alcohol test result or 5-year denial of authorization. For example, this type of potentially

disqualifying FFD information may include, but would not be limited to: (1) A report of an arrest for an alcohol-related traffic violation; (2) information from the suitable inquiry that an individual's employment was terminated by a previous private-sector employer because of drug- or alcohol-related job performance problems; or (3) information obtained from the suitable inquiry or other sources of information indicating that the individual is known to abuse illegal drugs or alcohol or is experiencing significant mental or emotional stress. The proposed paragraph would be necessary because the current rule does not address the authorization process in such circumstances and the NRC is aware that licensees and other entities have handled these circumstances inconsistently. Therefore, the proposed rule would add these requirements to establish the NRC's intent with respect to these circumstances and increase consistency between Part 26 programs.

Proposed § 26.69(c)(1) would be added to require the licensee or other entity to verify that the individual's self-disclosure addresses the applicable period specified in proposed § 26.61(b)(3). The proposed rule would not require the licensee or other entity to ''obtain'' a self-disclosure in all circumstances, because the individual may have already provided a self-disclosure under proposed §§ 26.55, 26.57, or 26.59 and an additional self-disclosure and employment history would be unnecessary.

Proposed § 26.69(c)(2) would require the licensee or other entity to conduct a suitable inquiry with every employer for the period that would be addressed in the self-disclosure and employment history. If the potentially disqualifying FFD information was identified during the course of conducting a suitable inquiry in accordance with proposed § 26.63(f) so that the suitable inquiry was partially completed, proposed § 26.69(c)(3) would require the licensee or other entity to conduct a more complete suitable inquiry by contacting every employer that the individual listed during the interruption period. The proposed paragraph would also require the licensee or entity to obtain and review any records that other licensees or entities who are subject to this part may have developed with regard to potentially disqualifying FFD information about the individual from the past 5 years. This more complete suitable inquiry would be necessary to ensure that the licensee or other entity has more information about the individual than is required for individuals whose last period of authorization was terminated favorably in order to make an appropriate authorization decision.

Proposed § 26.69(c)(3) would be added and would use the term, ''reviewing official,'' to refer to the employee who is designated by the licensee or other entity to make authorization decisions, as discussed with respect to proposed § 26.5 [Definitions]. The proposed paragraph would permit the reviewing official to grant or deny authorization, based upon his or her review of the circumstances associated with the potentially disqualifying FFD information. Because of the variety of circumstances that may arise, the proposed paragraph also would grant discretion to the reviewing official in deciding whether a determination of fitness is required, rather than requiring a determination of fitness in every case. However, if the reviewing official requests a determination of fitness and the professional who performs it recommends any form of treatment or drug and alcohol testing, including the collection of urine specimens under direct observation, proposed § 26.69(c)(4) would require the licensee or other entity to implement the treatment and testing recommendations.

Proposed § 26.69(c)(5) would be added to require pre-access and random testing of the applicant for authorization. The proposed paragraph would require the licensee or other entity to verify that the results of pre-access drug and alcohol tests are negative before granting authorization to the individual. The proposed rule would require the licensee or other entity to verify that test results are negative before granting authorization to the individual to provide evidence that the individual is avoiding substance abuse.

Proposed § 26.69(d) [Maintaining authorization with other potentially disqualifying FFD information] would be added to establish requirements for maintaining an individual's authorization when new potentially disqualifying FFD information is disclosed or discovered that was not a confirmed non-negative drug or alcohol test result or 5-year denial of authorization, if the reviewing official determines that maintaining authorization is warranted. A self-disclosure, suitable inquiry, and pre-access testing would not be required because the individual would not be applying for authorization. However, the proposed paragraph would require the reviewing official to review the circumstances related to the information, and, at his or her discretion, ensure that a professional with the appropriate qualifications makes a determination of fitness. The proposed paragraph would require the licensee or other entity to implement any treatment or testing requirements resulting from the determination of fitness. The proposed paragraph would be added because the current rule does not address maintaining an individual's authorization in such circumstances and the NRC is aware that licensees and other entities have handled these circumstances inconsistently. Therefore, the proposed rule would add these requirements to establish the NRC's intent with respect to these circumstances and increase consistency between Part 26 programs.

A new § 26.69(e) [Accepting followup testing and treatment from another Part 26 program] would establish continuity of care requirements for individuals who were subject to a followup testing and substance abuse treatment plan under one Part 26 program and transfer to another FFD program or leave and then return to the same FFD program. The proposed paragraph would require the receiving licensee other entity to continue the testing and treatment plan to which the individual was subject under the previous FFD program. The proposed rule would also permit the receiving licensee or other entity to accept and rely upon any followup testing that was completed while the individual was subject to the previous Part 26 program in determining how long followup testing must continue. For example, if an individual met all of the requirements for authorization by a new licensee, but had completed only 2 of the 3 years of followup testing required under a previous Part 26 program, then the granting licensee would administer the final year of the followup testing, but would not be required to ''re-start the clock'' and conduct another 3 full years of followup testing after the individual was authorized. If the transferring individual successfully completed any followup testing and treatment program required under the first FFD program, a previous determination of fitness indicated that the individual is fit for duty, and the individual's authorization by the first licensee or other entity was terminated favorably, then the proposed paragraph would permit the receiving licensee or other entity to accept the previous determination of fitness and would not require the granting licensee to develop and implement an additional testing and treatment plan.

Proposed § 26.69(f) [Sanctions for confirmed non-negative drug and alcohol test results] would be added to

clarify the minimum sanctions to be imposed on an individual who has confirmed non-negative drug and alcohol test results on any tests that may be required under this proposed section. Proposed § 26.69(f)(1) and (f)(2) would cross-reference the relevant sanctions specified in proposed Subpart D [Management actions and sanctions] to establish that those sanctions would apply to individuals about whom potentially disqualifying FFD information has been discovered or disclosed.

Section 26.71 Maintaining Authorization

Proposed § 26.71 [Maintaining authorization] would be added to state the requirements for maintaining authorization under this part. The proposed section would respond to stakeholder requests for this clarification at the public meetings discussed in Section V.

Proposed § 26.71(a) would provide that individuals may maintain authorization under the conditions listed in proposed § 26.71(a)(1)–(a)(4), as follows:

Proposed § 26.71(a)(1) would establish that an individual must comply with the licensee's or other entity's FFD policies to which the individual is subject. This proposed requirement thus relates, although it does not refer, to proposed § 26.27 [Written policy and procedures], which would require the licensee or other entity to prepare a clear and concise statement of its FFD policy and make that policy readily available to all individuals who are subject to it. The proposed rule would require that all individuals who are subject to the FFD policy must have information on what is expected of them and what consequences may result from a lack of adherence to the policy. Proposed § 26.71 would also require that, in order to maintain authorization, an individual must report any legal actions, as defined in proposed § 26.5 [Definitions]. Finally, although not explicitly specified in proposed § 26.71(a)(1), proposed § 26.33 [Behavioral observation] would require individuals to report any FFD concern to the personnel designated in the FFD policy.

Proposed § 26.71(a)(2) would establish that an individual may maintain authorization if the individual remains subject to a drug and alcohol testing program that complies with the requirements of Part 26, including random testing. Licensees and other entities who are subject to Part 26 are responsible for implementing drug and alcohol testing programs that comply with the requirements in proposed § 26.31 [Drug and alcohol testing], and the failure of a licensee or other entity to maintain a program would terminate the authorizations of individuals who have been granted authorization by the licensee or other entity. [See the discussion of § 26.71(b).] In addition, proposed § 26.31 also would place certain responsibilities on individuals who are subject to the testing program. In particular, under proposed § 26.31(d)(2)(iii), individuals who are selected for random testing would be required to report to the collection site as soon as reasonably practicable after notification, and within the time period specified in FFD program procedures, as well as to cooperate in the testing process. In appropriate circumstances, an individual's failure to report or cooperate could be the basis for terminating the individual's authorization.

Proposed § 26.71(a)(3) would establish that an individual may maintain authorization if the individual remains subject to a behavioral observation program that complies with the requirements of Part 26. Behavioral observation, as required by proposed § 26.33 [Behavioral observation], would be performed by individuals, including coworkers, who have been trained to detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, might constitute a threat to the health and safety of the public or the common defense and security.

Proposed § 26.71(a)(4) would establish that a condition for maintaining authorization is successful completion by the individual of required FFD training, according to the schedule in proposed § 26.29(c). As specified in proposed § 26.29(c)(1), the proposed rule would require the individual to complete training before the licensee or other entity grants initial authorization. Thereafter, as specified in proposed § 26.29(c)(2), the proposed rule would require individuals to complete refresher training or pass a comprehensive examination on a nominal 12-month frequency. Proposed § 26.29(d) would provide that licensees and other entities may accept training of individuals who have been subject to another Part 26 program and have, within the past 12 months, either had initial or refresher training or successfully passed a comprehensive examination that meets the requirements of proposed § 26.29.

Proposed § 26.29(d) would require a licensee or other entity to terminate an individual's authorization if the individual, for more than 30 [consecutive] days, is not subject to an FFD program that meets the requirements of Part 26. The requirements of the proposed paragraph would permit an individual to be away from all elements of a Part 26 program for this period of time in order to accommodate vacations and significant illnesses when the individual would not be reasonably available for behavioral observation or to collect specimens for random drug and alcohol testing. The proposed paragraph would be added in response to stakeholder requests and would be consistent with related requirements in the access authorization orders issued to nuclear power plant licensees on January 7, 2003.

Subpart D—Management Actions and Sanctions

Section 26.75 Sanctions

The first sentence of proposed § 26.75(a) would introduce the purpose of the section, which would be to define the minimum sanctions that licensees and other entities must impose when an individual has violated the drug and alcohol provisions of an FFD policy. The second sentence of the proposed paragraph would restate the second sentence of current § 26.27(b), which permits licensees and other entities to impose more stringent sanctions than those specified in the rule. The proposed rule would add a reference to paragraph (h) of the proposed section, which would establish limits on the sanctions that licensees and other entities may impose for non-negative validity and drug test results, to clarify that there is one exception to the blanket permission to impose more stringent sanctions granted in this paragraph, as discussed with respect to proposed paragraph (h) of this section. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.75(b) would be added to require licensees and other entities to permanently deny authorization to individuals who refuse to be tested or who in any way subvert or attempt to subvert the testing process. The proposed sanction is necessary because acts to subvert the testing process reflect a sufficiently egregious lack of trustworthiness and reliability to warrant permanent denial of authorization. An individual's willingness to subvert or attempt to subvert the testing process provides

strong evidence that the individual will also be willing to disregard other rules and regulations, such as safeguards requirements, which ensure the protection of public health and safety and the common defense and security. In addition, if an individual succeeds in subverting the testing process in order to hide substance abuse, the individual may pose an undetected and unacceptable risk to public health and safety or the common defense and security by performing the duties that require him or her to be subject to this part while impaired. Therefore, the proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by deterring acts to defeat the testing process as well as preventing any individuals who engage in them from posing any further risk to public health and safety and the common defense and security.

The proposed rule would specify three examples of actions that would be considered subversion or an attempt to subvert the testing process. These include refusing to provide a specimen and providing or attempting to provide a substituted or adulterated specimen. However, these examples are not intended to be exhaustive. For example, if a licensee or other entity determines that several individuals had colluded to notify potential donors that they would be selected for random testing on a particular day, so that the potential donors could plan to avoid work on that day or take other actions to ensure that their illegal drug use would not be detected, the NRC would expect the licensee or other entity to permanently deny authorization to all of the individuals who were involved in the collusion.

The proposed rule would not include submitting a dilute specimen as an example of a subversion attempt without additional evidence that the donor had diluted the specimen in order to mask the presence of drugs or drug metabolites in the specimen, for the reasons discussed with respect to proposed § 26.185(g). Submitting a dilute specimen, in itself, would not necessarily indicate an attempt to subvert the testing process because there are many legitimate causes for a dilute specimen, including drinking liquids in order to provide a specimen of sufficient quantity, as permitted in Section 2.4(g)(11) in Appendix A of the current rule and in proposed § 26.109(b)(1). Therefore, the proposed rule would not require licensees and other entities to apply the sanction of permanent denial of authorization for submitting a dilute specimen, unless there is other evidence that the donor had diluted the specimen in an attempt to subvert the testing process.

The phrase, ''for any test required under this part,'' would be added to proposed § 26.75(b) to indicate that applicants for authorization who subvert or attempt to subvert a pre-access or random test would also be subject to permanent denial of authorization. Although these individuals would not yet be performing any job duties that could affect public health and safety or the common defense and security, an attempt to subvert the testing process while in an applicant status provides strong evidence that the individual cannot be trusted to perform those job duties. Therefore, it is necessary to ensure that any applicant who subverts or attempts to subvert the testing process would be denied authorization.

Proposed § 26.75(c) would amend current § 26.27(b)(3), which establishes sanctions for the sale, use, or possession of illegal drugs within a protected area of any nuclear power plant, within a facility that is licensed to possess or use formula quantities of SSNM, or within a transporter's facility or vehicle. The proposed paragraph would retain the current sanction of a 5-year denial of authorization in these instances and add two other instances in which a 5-year denial of authorization would be required.

First, the proposed rule would require licensees and other entities to impose a 5-year denial of authorization on any individual who is determined to have consumed alcohol within a protected area of any nuclear power plant, within a facility that is licensed to possess or use formula quantities of SSNM, or within a transporter's facility or vehicle. This proposed change is necessary because consuming alcohol causes impairment, which poses the same risks to public health and safety as impairment from illegal drugs. Extending the scope of the current sanction to alcohol consumption also would be consistent with the revised FFD program performance objective in proposed § 26.23(d), which is to provide reasonable assurance that the workplaces subject to this part are free from the presence and effects of alcohol as well as illegal drugs. Therefore, the proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by reducing the risk to public health and safety and the common defense and security that on-site use of alcohol poses.

Second, the proposed rule would add the phrase, ''or while performing the job duties that require the individual to be subject to this part,'' to address circumstances in which an individual may be performing job duties that require him or her to be subject to this part but is not performing those duties within the protected area of a nuclear power plant, within a facility that is licensed to possess or use formula quantities of SSNM, or within a transporter's facility or vehicle. As one example, many nuclear power plant licensees' designated collection sites are located outside of the plant's protected area. The intent of the current rule is to prohibit the presence, sale, and use of alcohol or illegal drugs by FFD program personnel at a collection site that is located outside of the protected area, but the current rule does not specifically address such circumstances. The majority of licensees have appropriately interpreted the intent of the current rule, but the proposed rule would add this phrase to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

In addition, the list of activities in the current paragraph that an individual would be prohibited from performing would be deleted in the proposed paragraph and replaced with the summary term, ''authorization,'' for consistency with the use of this term throughout the proposed rule. As discussed with respect to proposed § 26.25 [Individuals subject to the fitness-for-duty program], the list of job duties that require individuals to maintain authorization and to be subject to this part would be presented once in proposed § 26.25, rather than repeatedly throughout the rule, for consistency with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.75(d) would amend the portion of current § 26.27(c) that requires licensees to record as a removal ''for cause'' an individual's resignation that occurs before the licensee ''removes'' the individual for violating the FFD policy. This portion of the current provision has raised implementation questions from licensees regarding the appropriate action to take in these circumstances. Licensees have questioned whether the intent of the current requirement is to deny authorization to an individual for some period of time, as required under current § 26.27(b)(2)–(b)(4), permanently deny authorization to the individual, or merely to record the resignation. Therefore, the proposed rule would clarify the intent of the current provision, as follows:

The proposed rule would establish the sanction of a 5-year denial of authorization for an individual who resigns before a licensee or other entity terminates the individual's authorization or denies authorization to an applicant for a first violation of the FFD policy involving a confirmed positive drug or alcohol test result. The proposed paragraph would establish a 5-year denial of authorization because the confirmed positive drug or alcohol test result, in combination with such a resignation, would be a strong indication that the individual has an active substance abuse problem. However, because the individual resigned or withdrew his or her application for authorization, the individual would not be available for the SAE to evaluate the seriousness of his or her substance abuse problem and devise an appropriate treatment plan, as required under proposed § 26.189 [Determination of fitness]. Therefore, prohibiting the individual from being granted authorization for a 5-year period would give the individual an opportunity to seek treatment and establish a 5-year history of sobriety, which would be required to regain authorization under proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information], while also ensuring that such an individual is not granted authorization without having demonstrated that he or she has overcome the substance abuse problem.

In addition, for any type of FFD policy violation, the proposed paragraph would require the licensee or other entity to record the fact that the individual had resigned or withdrawn his or her application for authorization, the nature of the FFD policy violation, and the sanction that would have been imposed if the individual had not resigned or withdrawn. Recording this information would be necessary to ensure that any licensees or other entities who may consider granting authorization to the individual in the future would be aware of the individual's behavior and the nature of the FFD policy violation. Subsequent licensees and other entities would then be able to ensure that the minimum requirements of this section are met. For example, if the FFD policy violation was a third confirmed positive drug or alcohol test result, proposed § 26.75(g) would prohibit a subsequent licensee or other entity from granting authorization to the individual under any circumstances.

The portion of current § 26.27(c) that refers to a refusal to provide a specimen for testing would be moved to proposed § 26.75(b) for organizational clarity, as discussed with respect to that paragraph.

Proposed § 26.75(e) would amend current § 26.27(b)(2) and expand its scope to include alcohol. Abuse of alcohol would no longer be excluded from the sanctions specified in this proposed section for several reasons. First, although the possession and use of alcohol are legal for adults and do not adversely reflect on an individual's trustworthiness and reliability, a perceived need to conceal an untreated, active alcohol abuse problem could cause an individual to be vulnerable to influence to act in ways that are adverse to the common defense and security. Second, alcohol-related impairment in the nuclear workplace poses an undue potential risk to public health and safety that is comparable to the risk imposed by impairment from the use of drugs. Third, some licensees have not imposed appropriately stringent sanctions on individuals who have abused alcohol in a manner that could cause the individual to be impaired while performing the job duties that require individuals to be subject to this part. Therefore, in order to deter individuals from abusing alcohol and ensure that individuals who may be impaired from alcohol are not permitted to perform job duties under this part, the proposed rule would impose the same sanctions for abusing alcohol as those required for abusing drugs in the proposed paragraph. The proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs.

Proposed § 26.75(e)(1) would retain the intent of the second sentence of current § 26.27(b)(2), which states that licensees and other entities must remove an individual from performing activities under this part for at least 14 days following a first confirmed positive test result. However, the proposed paragraph would require licensees and other entities to terminate the individual's authorization for at least 14 days, rather than ''remove'' the individual. At the public meetings discussed in Section V, the stakeholders indicated that the term, ''remove,'' is confusing because it could be interpreted as requiring licensees and other entities to terminate the individual's employment, which is not the intent of this paragraph. The stakeholders suggested using the phrase, ''terminate the individual's authorization,'' to more accurately characterize the required action, with which the NRC concurred.

The stakeholders also requested that the requirements in the current paragraph related to referring the individual to the EAP for assessment and counseling be eliminated from proposed § 26.75(e)(1). The stakeholders noted that many licensees terminate an individual's employment at the same time that they terminate the individual's authorization after a first confirmed positive test result. They suggested that, if the licensee or other entity terminates the individual's employment and does not intend to provide the individual with an opportunity to regain authorization, it is inappropriate to require the licensee or other entity to provide assessment and counseling services to the individual. However, some licensees have interpreted the current provision as requiring them to provide EAP services to individuals who are no longer in their employ. The NRC concurs that the intent of the current rule is for licensees and other entities to provide assessment and counseling services only in those instances in which the licensee or other entity desires to reinstate the individual's authorization. Therefore, the proposed change would be made to clarify the intent of the provision.

The proposed rule would also move the requirements in the current paragraph that are related to permitting the individual to regain authorization from this section to proposed Subpart C [Granting and Maintaining Authorization], because this section would address sanctions for FFD policy violations, rather than FFD requirements for granting authorization. Requirements for granting authorization to an individual after his or her authorization has been terminated unfavorably for a first confirmed positive drug or alcohol test result would be addressed in proposed § 26.69(b) [Authorization after a first confirmed positive drug or alcohol test result or a 5-year denial of authorization] of proposed Subpart C. This proposed change would be made for organizational clarity in the rule.

Proposed § 26.75(e)(2) would increase the length of the period for which licensees and other entities must deny an individual's authorization for a second confirmed positive test result from 3 years in current § 26.27(b)(vii) to 5 years. This proposed change would be made to provide higher assurance that individuals who have had a second confirmed positive test result are able to abstain from substance abuse for at least 5 years before a licensee or other entity may again consider granting authorization to them. The 5-year period is based upon the research literature indicating that individuals who abstain from substance abuse for 5 years after

treatment are less likely to relapse than individuals who have been able to abstain for 3 years. In addition, the proposed more stringent sanction for a second confirmed positive test result would provide greater deterrence to recidivism than the current 3-year period.

Proposed § 26.75(f) would amend current § 26.27(b)(5), which states that the sanctions for confirmed positive drug test results in current § 26.27 do not apply to the misuse of alcohol, valid prescriptions, and over-the-counter drugs, but requires licensees' FFD policies to establish sanctions that are sufficient to deter misuse of those substances. The proposed rule would require the same minimum sanctions for alcohol abuse as those required for drug abuse. Impairment caused by alcohol abuse creates a risk to public health and safety that is fundamentally similar to the risk posed by the use of illegal drugs. Some licensees, however, have imposed lesser sanctions for alcohol violations, an approach that is inconsistent with the NRC's intent. Therefore, the proposed rule would rectify this situation by explicitly requiring the same minimum sanctions for abuse of alcohol as currently required for the use of illegal drugs.

In addition, proposed § 26.75(f) would require licensees and other entities to impose the same sanctions as required for abuse of illegal drugs if the MRO determines that misuse of prescription drugs or over-the-counter medications that results in a positive drug or alcohol test result represents substance abuse. The MRO would make this determination in accordance with proposed § 26.185(j). Misuse of prescription and over-the-counter medications may include, for example, the use of a spouse's or other family member's prescription medications that may cause impairment, such as some pain relievers, or the excessive use of some cold and cough preparations available over-the-counter containing alcohol or other active ingredients that may cause impairment. However, the same substances may be used by an individual who has a substance abuse problem. For example, an individual who has become addicted to opiates may use a spouse's or other family member's codeine tablets or other opiates that were prescribed for pain relief to assist the addicted individual in avoiding withdrawal symptoms. Under the proposed paragraph, if the MRO determines that an individual's use of a prescription or over-the-counter medication represents substance abuse, the licensee or other entity would be required to impose the minimum sanctions specified in this proposed section for a confirmed positive drug or alcohol test result, as appropriate. If the MRO determines that the misuse of a prescription or over-the-counter medication does not represent substance abuse, the proposed rule would require the licensee or other entity to impose the sanctions for substance misuse that the licensee or entity would specify in the FFD policy.

The proposed rule would also revise but retain the requirement in the last sentence of current § 26.27(b)(5), which states that sanctions for the misuse of prescription and over-the-counter drugs must be sufficient to ''deter abuse of legally obtainable substances.'' These sanctions must be sufficient to deter the misuse of prescription and over-the-counter medications because such misuse may lead to impairment on the job. However, the proposed rule would eliminate the phrase, ''as a substitute for abuse of proscribed drugs,'' in the last sentence of current § 26.27(b)(5) because it unnecessarily limits the circumstances in which sanctions for the misuse of prescription and over-the-counter drugs would be imposed.

Proposed § 26.75(g) would amend current § 26.27(b)(4). The portions of the current paragraph that establish requirements for granting authorization to an individual who has violated the licensee's or other entity's FFD policy would be moved to proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information] in Subpart C [Granting and Maintaining Authorization] for organizational clarity because proposed § 26.75(g) would only address sanctions for FFD policy violations. The proposed paragraph would retain the portion of the current paragraph that requires licensees and other entities to permanently deny authorization to an individual who has repeatedly violated a licensee's or other entity's FFD policy. The proposed rule would require an individual's authorization to be denied permanently if he or she has another confirmed positive drug or alcohol test result after he or she has had authorization denied for 5 years in accordance with other paragraphs in this proposed section. This proposed more stringent sanction would strengthen the effectiveness of the rule in providing reasonable assurance that individuals who are subject to this part are trustworthy and reliable, as demonstrated by avoiding substance abuse, and by increasing the assurance that only individuals who are fit for duty are permitted to perform the job duties listed in proposed § 26.25 [Individuals subject to the fitness-for-duty program].

Proposed § 26.75(h) and (i) would amend current § 26.24(d)(2), which permits licensees to temporarily suspend an individual's authorization or take other administrative action if an individual has a positive drug test result for marijuana or cocaine metabolites that is identified through initial testing at the licensee testing facility. For organizational clarity, the proposed rule would divide the current paragraph into two paragraphs to separate the requirements related to the conditions under which licensees and other entities may and may not take action on the basis of initial test results.

Proposed § 26.75(h) would continue to prohibit licensees and other entities from taking administrative actions or imposing sanctions on an individual based on an positive initial drug test result reported by an HHS-certified laboratory. The proposed paragraph would also continue to permit licensees and other entities to take administrative actions on the basis of positive initial drug test results for marijuana and cocaine from a licensee testing facility. However, in order for the licensee or other entity to take action, the proposed rule would require that the urine specimen that yields a non-negative drug test result(s) must also appear to be a valid specimen, based upon the results of validity screening or initial validity test results at the licensee testing facility. In addition, the proposed paragraph would prohibit licensees and other entities from imposing sanctions or taking other actions in response to non-negative validity screening or initial validity test results from a specimen in which no drug metabolites were detected. This proposed prohibition would be added because the procedures, instruments, and devices used in conducting validity screening and initial validity tests have not yet been proven to be sufficiently accurate and reliable to support management actions or sanctions without confirmatory testing. Permitting licensees and other entities to take actions on the basis of validity screening or initial validity test results would risk imposing substantial burdens on individuals from false non-negative test results. Therefore, this prohibition would be added to meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26.

Proposed § 26.75(i)(1)–(4) would retain the requirements in current § 26.24(d)(2)(i)–(iv) that establish the conditions under which licensees and other entities may take administrative

actions on the basis of a positive initial drug test result for marijuana or cocaine metabolites from a licensee testing facility. The proposed rule would add a requirement for specimen validity testing (see the discussion of proposed § 26.31(d)(3)(i) with respect to the addition of validity testing requirements in the proposed rule) and require that the specimen for which action will be taken must appear to be valid, based on validity screening or initial validity test results from the licensee testing facility. The proposed rule would also revise the terminology used in the current paragraph to be consistent with the terminology used throughout the proposed rule (see the discussion of proposed § 26.5 [Definitions] with respect to the new terminology adopted in the proposed rule) and update the cross-references to other sections of the rule to be consistent with the organization of the proposed rule.

Section 26.77 Management Actions Regarding Possible Impairment

A new § 26.77 [Management actions regarding possible impairment] would amend the requirements of current § 26.27(b)(1). The current paragraph requires licensees and other entities to remove impaired workers, or those whose fitness may be questionable, from performing activities within the scope of this part, and permits them to return the individuals to duty only after the individuals are determined to be fit to safely and competently perform their duties. The proposed section would retain the intent of the current provision, but the terminology used in the proposed section would be revised to be consistent with the terminology used throughout the proposed rule. Cross-references to other sections of the rule would be updated to be consistent with the organization of the proposed rule. In addition, several new requirements would be added.

Proposed § 26.77(a) would be added to describe the purpose of the proposed section, which is to prescribe the management actions that licensees and other entities must take when an individual shows indications that he or she is not fit to safely and competently perform the duties that require the individual to be subject to this part. The proposed paragraph would be added to introduce the section and to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.77(b) would retain the portion of current § 26.27(b)(1) that requires the licensee or other entity to take immediate action to prevent an individual from performing the job duties that require the individual to be subject to this part if an individual appears to be impaired, or his or her fitness is questionable. The proposed paragraph would add cross-references to proposed § 26.27(c)(3), and § 26.199(h) and (i), because the proposed provisions would provide exceptions to the requirement for immediate action. Proposed § 26.27(c)(3) would permit licensees and other entities to use individuals who have consumed alcohol if they are needed to respond to an emergency and the licensee or other entity establishes controls and conditions under which the individual may perform work safely. Proposed § 26.199(h) and (i) would also permit licensees who are subject to proposed Subpart I [Managing Fatigue] to use fatigued individuals to perform work if the licensee determines that they are needed to protect the common defense and security or respond to an emergency and establishes controls and conditions under which the individual may perform work safely. The cross-references would be added to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

The proposed rule would also revise some terminology used in the current paragraph in response to stakeholder requests during the public meetings discussed in Section V. The stakeholders indicated that, because the current rule requires them to ''remove'' individuals whose fitness may be questionable, some FFD programs have interpreted the current paragraph as requiring them to terminate the individual's authorization. This was not the intent of the current provision. In this instance, the intent of the rule was for licensees and other entities to prevent the individual from performing the job duties that would require the individual to be subject to this part in order to ensure that any potential impairment could not result in errors or lapses in judgment that may pose a risk to public health and safety or the common defense and security until the cause of the problem could be identified and resolved. Therefore, the proposed rule would replace the phrase, ''removed from activities within the scope of this part,'' with the phrase, ''prevent the individual from performing the job duties,'' and make other minor changes to the wording of the current requirement to clarify the intent of the provision. The proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.77(b)(1) would retain the intent of current § 26.24(a)(3), which requires licensees and other entities to conduct drug and alcohol testing for cause. The proposed rule would require for-cause testing based upon a ''reasonable suspicion'' that the individual may be impaired from possible substance abuse. Reasonable suspicion of substance abuse could be based upon an observed behavior, such as unusual lack of coordination or slurred speech, or a physical condition, such as the smell of alcohol. If the only basis for a reasonable suspicion is the smell of alcohol, then alcohol testing would be required, but the proposed rule would not require the licensee or other entity to perform a drug test unless other indicators of possible impairment are present.

The proposed rule would not require drug testing without other indicators of impairment in response to stakeholder comments made during the public meetings discussed in Section V. The stakeholders reported that many of the for-cause tests they perform are initiated as a result of a security officer or other person reporting that an individual smells of alcohol without behavioral indications of impairment. They also noted that the very large majority of the for-cause drug tests that they conduct in these circumstances yield negative results, including those instances in which the alcohol test results are positive. The stakeholders suggested that the current requirement to conduct drug tests in these circumstances imposes a significant burden because the drugs tests impose costs, not only for collecting and testing the urine specimens, but also because they cannot permit the individual to resume performing his or her job duties until the drug test results are available, which may take several days. The stakeholders argued that the burden is unnecessary because the drug tests yield positive results so infrequently and, therefore, do not serve their intended purpose of detecting drug abuse. Based on the stakeholders arguments and the FFD program performance data that support them, the NRC concurs that drug testing is unnecessary when the smell of alcohol is the only indication that for-cause testing is required, and so would eliminate it from the proposed rule. The proposed rule would continue to require drug testing if there are behavioral or physical indications of impairment in addition to the smell of alcohol.

Proposed § 26.77(b)(2) would be added but would apply only to nuclear power plant licensees who would be subject to proposed Subpart I [Managing Fatigue]. The proposed paragraph would permit these licensees to forego drug and alcohol testing and a

determination of fitness, if the licensee is certain that the individual's observed behavior or physical condition is solely due to fatigue. In this case, the proposed rule would require the licensee to conduct a fatigue assessment, as defined in proposed § 26.201 [Fatigue assessments], before permitting the individual to return to performing his or her job duties.

Proposed § 26.77(b)(3) would be added to specify the actions that licensees and other entities must take when there are indications that an individual may be impaired, other than behavior or a physical condition that creates a reasonable suspicion of substance abuse (or fatigue, in the case of licensees who are subject to proposed Subpart I). Consistent with current § 26.27(b)(1), the proposed rule would permit the licensee or other entity to return the individual to duty only after identifying and resolving the cause of the impairing condition, and making a determination of fitness indicating that the individual is fit to safely and competently perform his or her duties (see the discussion of proposed § 26.189 [Determination of fitness] for a more detailed discussion of the determination of fitness process). The proposed paragraph would not require licensees and other entities to unfavorably terminate an individual's authorization for illness, fatigue, temporary mental and emotional stress, or other conditions that may affect an individual's fitness, but would prohibit the licensee or other entity from assigning the impaired individual to perform job duties that require the individual to be subject to this part until a determination is made that the individual is fit to return to duty.

Proposed § 26.77(c) would update current § 26.27(d) to be consistent with current NRC notification procedures.

Subpart E—Collecting Specimens for Testing

Section 26.81 Purpose

Proposed § 26.81 [Purpose] would be added to describe the purpose of proposed Subpart E, which would be to establish requirements for collecting specimens for drug and alcohol testing. Adding the proposed section at the beginning of the proposed subpart would assist in locating provisions within the rule and so would be consistent with Goal 6 of the rulemaking, which is to improve clarity in the organization and language of the rule.

Section 26.83 Specimens To Be Collected

A new § 26.83 [Specimens to be collected] would specify the types of specimens that licensees and other entities must collect for initial and confirmatory drug and alcohol testing.

Proposed § 26.83(a) would require licensees and other entities to collect either breath or oral fluids (*i.e.*, saliva) for initial tests for alcohol. The proposed rule would continue to require collecting only breath specimens for confirmatory alcohol testing. The proposed rule would add permission to use oral fluids (*i.e.*, saliva) for initial alcohol tests because devices for testing oral fluids for alcohol have matured sufficiently to provide valid and reliable initial test results. Further, there may be circumstances, such as collecting a specimen of oral fluids from a donor who has impaired lung functioning, in which the use of such devices is more efficient for both donors and the FFD program than collecting breath specimens. Therefore, the proposed permission to collect oral fluids for initial alcohol testing would meet Goal 3 of this rulemaking, which is to improve the efficiency of FFD programs. Additionally, other Federally mandated alcohol testing programs permit the use of these devices for initial alcohol testing. Therefore, adding permission to collect oral fluids for initial alcohol testing to the proposed rule would also be consistent with Goal 1 of the rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

The proposed rule would eliminate the use of blood as a specimen for alcohol testing at the donor's discretion, which is permitted in current § 26.24(g) and Section 2.2(d)(4) in Appendix A to Part 26. The proposed rule would eliminate the current provisions related to blood alcohol testing for several reasons. Since the current rule was first promulgated, licensees have repeatedly raised questions related to the proper interpretation of a confirmatory alcohol test result using an evidential breath testing device (EBT) and an alcohol test result derived from a blood specimen when the results from the two types of testing differ. Specifically, if a confirmatory alcohol test result using an EBT is positive, but the result from testing a blood specimen is negative, licensees have asked which test result they should rely on in determining whether the donor has violated the FFD policy. Although the NRC's original intent was that the result from the blood test was to be definitive, delays in obtaining a blood specimen have sometimes resulted in blood test results that fell below the alcohol cutoff level of 0.04 percent BAC due to alcohol metabolism during the period of the delay. Some licensees have been reluctant to apply sanctions for a positive alcohol test result in these instances even though alcohol metabolism over time would explain the lower test result from the blood sample. Further, experience has shown that few donors request testing of a blood sample. Data gathered from a sampling of representative FFD programs show that individuals requested an average of fewer than one blood test per program within the period reviewed (January–May 2002). Additionally, the use of EBTs for confirmatory alcohol tests has consistently withstood legal challenge. The added protection of donors' rights that was envisioned when the provisions for voluntary testing of blood specimens were incorporated into the current rule has not been realized in practice. The current requirement has also been costly for licensees, who are required to ensure that an individual who is trained to draw blood is available to do so, should a donor request blood testing. Based upon information provided by stakeholders at the public meetings discussed in Section V, the NRC determined that the costs associated with retaining this provision are not justified because of the very few instances in which donors have requested blood alcohol testing. Therefore, references to collecting and testing blood specimens for alcohol would be deleted from the proposed rule.

Proposed § 26.83(b) would retain but make explicit the implied requirement in the first sentence of current § 26.24(b) (and other provisions that are interspersed throughout the current rule) for licensees and other entities to collect only urine specimens for drug testing. At the time the current rule was promulgated, it was unnecessary to establish an explicit requirement to collect and test only urine specimens for drugs in Part 26 programs because methods for testing other specimens were not available and the HHS Guidelines only addressed testing urine specimens. Since that time, methods for testing alternate specimens, such as oral fluids, sweat, and hair, have become commercially available and the HHS has published proposed revisions to its Guidelines (69 FR 19673; April 13, 2004) that would permit the use of such alternate specimens for drug testing in Federal workplace drug testing programs. The NRC is considering

permitting the use of alternate specimens for drug testing when the HHS has published final revisions to its Guidelines related to these types of specimens. The revised HHS Guidelines will identify acceptable collection procedures and testing methods. However, HHS has not yet published final Guidelines for collecting and testing these alternate specimens. Therefore, it is necessary to add § 26.83(b) to the proposed rule to clarify that the NRC intends to continue prohibiting the collection and drug testing of specimens other than urine in this rulemaking, except as permitted under proposed § 26.31(d)(5) [Medical conditions] for the reasons discussed with respect to that paragraph.

Section 26.85 Collector Qualifications and Responsibilities

A new § 26.85 [Collector qualifications and responsibilities] would replace the collector qualifications and training requirements that are specified in the definition of ''collection site person'' in current Sections 1.2, 2.2(d), and 2.4(b) in Appendix A to Part 26. The intent of the current provisions would be retained in the proposed section, but the proposed rule would group the requirements together within this section for organizational clarity in the rule. In addition, as will be described below, the proposed rule would amend the current collector qualifications and training requirements to increase the consistency of Part 26 with the requirements of other Federal agencies and incorporate the lessons learned from those programs, as discussed in Section IV. B with respect to Goal 1 of this rulemaking.

Proposed § 26.85(a) [Urine collector qualifications] would be added to provide more detailed requirements for urine collector qualifications and training than are contained in the current definition of ''collection site person'' and current Section 2.2(d) in Appendix A to Part 26. The proposed paragraph would require urine collectors to be knowledgeable of the requirements of this part, the FFD policy and procedures of the licensees or other entities for whom collections are performed, and keep current on any changes to urine collection procedures. The proposed changes would increase the consistency of urine collector qualification requirements with those of other Federal workplace drug testing programs as well as consistency between Part 26 urine collection procedures. These more detailed requirements would be added for the reasons discussed in Section IV.C.

Proposed § 26.85(a) would retain the requirements in current Section 2.2(d) that urine collectors must receive training to perform their duties and demonstrate proficiency in applying the requirements of the proposed paragraph before serving as a collector. Proposed § 26.85(a)(1)–(a)(3) would list the topics that the proposed rule would require collector training to address. Proposed § 26.85(a)(1) would require collectors to be trained in the steps that are necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form to the licensee testing facility or HHS-certified laboratory, as appropriate. Proposed § 26.85(a)(2) would require training in methods to address ''problem'' collections, which may include, but would not be limited to, collections involving ''shy bladder'' (see the discussion of proposed § 26.119 [Determining ''shy'' bladder] for an explanation of this term and the procedures involved) and attempts by a donor to tamper with a specimen. Proposed § 26.85(a)(3) would require the training to instruct collectors on how to correct problems in collections, which may include, but would not be limited to, a donor refusing to cooperate with the collection process or an incident in which a urine specimen is spilled. These proposed requirements would be added to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.85(a)(4) would retain the portion of current Section 2.2(d)(1) in Appendix A to Part 26 that requires collector training to emphasize the collector's responsibility for maintaining the integrity of the specimen collection and transfer process, to carefully ensure the modesty and privacy of the donor, and avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

Proposed § 26.85(b) [Alcohol collector qualifications] would be added to specify requirements related to alcohol collector qualifications and training. Portions of this paragraph would be the same as the requirements for urine collectors in proposed § 26.85(a), including the first three sentences of proposed § 26.85(b) and proposed § 26.85(b)(4) and (b)(5), and would be added here for the same reasons discussed above with respect to the first three sentences of proposed § 26.85(a), and proposed § 26.85(a)(3) and (a)(4), respectively. The proposed rule would repeat the requirements that are applicable to both urine and alcohol collectors in each of these paragraphs because some FFD programs may not train collectors to perform both types of collections. Repeating the requirements would make it easier to locate the requirements that apply to urine or alcohol collectors, respectively, to meet Goal 6 of the rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.85(b)(1) and (b)(3) would require alcohol collectors to receive training that addresses the alcohol testing requirements of this part and methods to address ''problem'' collections, including, but not limited to, collections involving ''shy lung'' problems or attempts by a donor to tamper with a specimen. By contrast to proposed § 26.85(a)(2), which addresses ''shy bladder'' problems in urine collections, the proposed rule would not incorporate the related DOT procedures for determining ''shy lung'' problems in alcohol collections. During the public meetings discussed in Section V, stakeholders requested that the proposed rule incorporate DOT's ''shy bladder'' procedures, but did not believe that adding DOT's ''shy lung'' procedures to the proposed rule is necessary. The stakeholders reported that ''shy lung'' has not been a problem for donors, based on their experience implementing the breath testing requirements of Part 26 since the rule was first promulgated. Therefore, proposed paragraph § 26.85(b)(3) would require alcohol collectors to be able to implement the ''shy lung'' procedures established by any FFD program for whom the collectors are providing collection services, but would not establish requirements for responding to ''shy lung'' problems in the rule. The NRC invites comment on this omission.

Proposed § 26.85(b)(2) would be added to require alcohol collectors to be trained in the operation of the particular alcohol testing device(s) [*i.e.*, the alcohol screening devices (ASDs) and evidential breath testing devices (EBTs)] to be used in conducting alcohol tests, consistent with the most recent version of the manufacturers' instructions. The proposed rule would add a requirement for alcohol collectors to be trained to follow the most recent version of the testing device manufacturers' instructions because the NRC is aware that some FFD programs did not implement device manufacturers' recommended changes to instructions for using the testing devices. Although the NRC staff is not aware of any testing errors or instances in which donors have challenged the results of alcohol tests that were not performed in accordance with the most recent version

of the device manufacturer's instructions, the proposed rule would add this requirement to ensure that alcohol test results continue to be accurate and cannot be challenged on this basis. The proposed changes would also be consistent with the alcohol collector training requirements of other Federal agencies.

Proposed § 26.85(c) [Alternative collectors] would amend the last sentence of current Section 2.2(d)(2) in Appendix A to Part 26, which permits medical personnel to perform specimen collections without receiving the training that is required for non-medical collectors. The proposed rule would permit medical personnel to conduct specimen collections for the purposes of this part only under the conditions that would be specified in proposed § 26.85(c)(1)–(c)(5), which may include, but would not be limited to the collection of specimens for post-event testing by a nurse or medical technician at a hospital. The proposed rule would limit the circumstances in which an untrained medical professional, technologist, or technician may perform collections for a licensee or other entity because the experience of other Federal agencies has shown that medical personnel who are untrained in specific collection procedures have committed errors in collections that resulted in unnecessary legal challenges to test results. At the same time, the NRC is also aware that licensees and other entities may occasionally have to rely upon such individuals to collect specimens for drug and alcohol testing, as discussed with respect to proposed § 26.25(b)(1). Therefore, the proposed rule would permit untrained medical personnel to collect specimens to facilitate the collection of specimens for testing in rare circumstances in which a qualified collector could not reasonably be expected to be available, but would otherwise require medical personnel who do not meet the criteria specified in proposed § 26.85(c)(1)–(c)(5) to receive the same training as non-medical collectors. The proposed change would be made to meet Goal 3 of the rulemaking, which is to improve the effectiveness and efficiency of FFD programs, by reducing the likelihood of errors and legal challenges to test results.

The proposed rule would eliminate current Section 2.2(d)(4) in Appendix A to Part 26, which requires that donors must be informed of the option to request blood testing. The current requirement would be eliminated because blood specimens would no longer be used for alcohol testing, as discussed with respect to current § 26.83(a).

Proposed § 26.85(d) would amend current Section 2.7(o)(5) [Personnel available to testify at proceedings] in Appendix A to Part 26, which requires that the licensee testing facility and HHS-certified laboratory must make available qualified individuals to testify in administrative or disciplinary proceedings related to drug and alcohol test results. The proposed rule would add an explicit requirement for collection site personnel to be available to testify at proceedings because this requirement is implied but not explicitly stated in the current provision. At the time the rule was first published, licensee testing facilities and collection sites were typically co-located at a site. However, this is no longer the case. In some current FFD programs, alcohol testing and urine specimen collections occur at the collection site, but initial testing of urine specimens is performed at a licensee testing facility, which may not be co-located with the collection site. Therefore, the proposed rule would add this paragraph to retain the NRC's original intent that licensees and other entities must make available collection site personnel to testify, as needed, in administrative and/or legal proceedings related to an alcohol or drug test result. For organizational clarity, the requirements in the current paragraph that address the availability of personnel to testify in proceedings related to drug test results from the licensee testing facility would be moved to § 26.139(c) of proposed Subpart F [Licensee Testing Facilities] and those related to HHS-certified laboratories would be moved to § 26.153(f)(2) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services].

Section 26.87 Collection Sites

A new § 26.87 [Collection sites] would be added to reorganize current requirements related to specimen collection sites. In general, the proposed rule would group together in this section the requirements that are related to collection sites, which are currently distributed among several different sections in Appendix A to Part 26. The proposed change would be made to meet Goal 6 of this rulemaking, which is to improve organizational clarity in the rule.

Proposed § 26.87(a) would amend current Section 2.4(a) in Appendix A to Part 26, which requires FFD programs to designate collection sites and ensure that they are fully equipped to collect specimens for testing. The proposed paragraph would delete reference to blood specimens because the proposed rule would no longer provide donors with the option to request blood testing for alcohol for the reasons discussed with respect to proposed § 26.83(a). The proposed paragraph would add a requirement for collection sites to be capable of alcohol testing, which was implied in the current paragraph but not explicitly stated. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule. The proposed paragraph would retain the current permission for licensees and other entities to use properly equipped mobile collection facilities.

Proposed § 26.87(b) would revise the first sentence of current Section 2.4(f) in Appendix A to Part 26 to require visual privacy for donors while the donor and collector are viewing the results of an alcohol test and retain the current requirement for individual privacy during urine specimen collections, except if the urine specimen collection must be conducted under direct observation. The new requirement for visual privacy while viewing alcohol test results would increase the consistency of Part 26 with the alcohol testing procedures of other Federal agencies and assure greater privacy for donors who are subject to FFD programs who do not provide visual privacy under the current rule. This proposed change would be made to meet Goal 7 of this rulemaking, which is to protect the privacy of individuals who are subject to Part 26. For organizational clarity, the proposed rule would move the current requirements in Section 2.4(f) in Appendix A to Part 26 that are related to collecting a specimen under direction observation to proposed § 26.115 [Collecting a urine specimen under direct observation].

Proposed § 26.87(c) would retain only the portion of current Section 2.7(m) in Appendix A to Part 26 that requires licensees' and other entities' contracts for collection site services to permit unfettered NRC, licensee, and other entity access to collection sites for unannounced inspections. For organizational clarity, the requirements in the current paragraph related to licensee testing facilities would be relocated to proposed Subpart K [Inspections, Violations, and Penalties] and subsumed under proposed § 26.221(a). The portions of the current paragraph that apply to HHS-certified laboratories would be moved to § 26.153(f) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services], also for organizational clarity.

In addition, proposed § 26.87(c) would add a requirement that licensees' and other entities' contracts for collection site services must permit unfettered NRC, licensee, and other entity access to all information and documentation that is reasonably relevant to inspections and audits. This proposed requirement for access to documentation would be added for consistency with the HHS Guidelines, which also require collection sites to provide information and documentation as part of inspections and audits. Therefore, this proposed change would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines. The term, ''audit,'' would be added to the proposed paragraph because, although the NRC conducts inspections, licensees and other entities would be required to conduct audits under proposed § 26.41 [Audits and corrective action]. Adding this term to the proposed paragraph would increase the clarity of its language, consistent with Goal 6 of the rulemaking.

Proposed § 26.87(d) would revise current Section 2.4(c) in Appendix A to Part 26 to clarify current requirements for assuring collection site security and the integrity of specimen collection procedures. The proposed rule would group requirements related to assuring the security of a licensee's or other entity's designated collection site in this proposed paragraph for organizational clarity. The requirements contained in current Section 2.4(c) in Appendix A to Part 26 that address assuring collection security when a designated collection site is inaccessible and there is an immediate requirement to collect a urine specimen would be moved to proposed § 26.87(f), also for organizational clarity. The proposed paragraph would include other clarifying changes to current Section 2.4(c) in Appendix A to Part 26, in response to stakeholder requests for such clarifications at the public meetings discussed in Section V, as follows:

Proposed § 26.87(d)(1) would retain the first sentence of current Section 2.4(e) in Appendix A to Part 26, which requires that only authorized personnel may have access to any part of a collection site in which specimens are collected and stored. This requirement would be moved to the proposed paragraph because it addresses the topic of collection site security. Therefore, this change would be made for organizational clarity.

Proposed § 26.87(d)(2) would amend the second sentence of current Section 2.4(c) in Appendix A to Part 26, which requires collection sites to be secure, by providing examples of acceptable methods to assure collection site security. The proposed rule would add these examples in response to stakeholder requests during the public meetings discussed in Section V. The stakeholders noted that the requirement that collection sites ''must be secure'' has raised many implementation questions. Therefore, the proposed rule would add examples of acceptable means to ensure collection site security, including, but not limited to, physical measures to control access, such as locked doors, alarms, or visual monitoring of the collection site when it is not occupied. The proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.87(d)(3) would amend the third sentence in current Section 2.4(c) in Appendix A to Part 26, which requires that the portion of any facility that is not dedicated solely to drug and alcohol testing must be secured during testing, and combine it with the third sentence of current Section 2.4(c)(1) in Appendix A to Part 26, which requires posting the facility against unauthorized access during the collection. The proposed rule would replace the phrase, ''in the case of a public restroom,'' in the last sentence of current Section 2.4(c)(1) in Appendix A to Part 26, with the phrase, ''if a collection site cannot be dedicated solely to collecting specimens,'' to clarify that a specimen may be collected at locations other than public restrooms. The proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.87(e) would be added to specify the steps that licensees and other entities must take to deter dilution and adulteration of specimens during urine collections. The proposed paragraph would retain and amend portions of current Section 2.4(g) in Appendix A to Part 26, as explained below:

Proposed § 26.87(e)(1) would relax the requirement for use of a bluing agent in any source of standing water, such as a toilet bowl or tank, in current Section 2.4(g)(1) of Appendix A to Part 26. The proposed rule would permit licensees and other entities to use colors other than blue. A yellow coloring agent would not be permitted because it would preclude the collector's ability to determine whether a donor had diluted the specimen with water from a source of standing water in the stall or room in which the donor provides a specimen. The proposed relaxation would not affect the accuracy of drug tests, but would give FFD programs increased flexibility in the choice of coloring agents. The proposed rule would make this change in response to stakeholder requests during the public meetings discussed in Section V and to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.87(e)(1) would also add a requirement that the coloring agents that are added to any source of standing water in the stall or room in which the donor is to provide a specimen cannot interfere with drug or validity tests. The proposed requirement would be necessary to ensure that, if a donor attempted to subvert the testing process through diluting his or her specimen, the coloring agent would not interfere with testing assays and, therefore, would permit the detection of prohibited drug use. The proposed requirement would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by deterring dilution attempts using sources of standing water and increasing the likelihood that dilution attempts of this type would be detected.

Proposed § 26.87(e)(2) would retain the second sentence of current Section 2.4(g)(1) in Appendix A to Part 26, which requires sources of standing water to be secured, but shorten it without changing the intended meaning of the requirement. The proposed change would be made to improve clarity in the language of the rule.

Proposed § 26.87(e)(3) would be added to require that chemicals or products that could be used to adulterate a urine specimen must be secured or removed from the collection site. The collector would also be required to inspect the enclosure to ensure that no potential adulterants are available before the donor would enter the stall or enclosure. These requirements would be added to prevent possible donor attempts to subvert the testing process by adulterating a urine specimen with materials that are available at the collection site. The proposed rule would add this provision to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs. The proposed provision would also be consistent with the related requirements of other Federal agencies.

Proposed § 26.87(f) would reorganize current Section 2.4(c)(1), portions of Section 2.4(c)(2), and Section 2.4(g)(10) in Appendix A to Part 26 to prescribe acceptable procedures for collecting specimens at locations other than a

designated collection site in unusual circumstances, such as a specimen collection for post-event testing at a hospital. The proposed rule would group these requirements together in a single paragraph and separate them from those related to collecting specimens at a designated collection site in proposed § 26.87(d) and (e) to make it easier to locate these requirements within the rule. The proposed change would be made to improve organizational clarity in the rule.

Proposed § 26.87(f)(1) would amend current Section 2.4(c)(1) in Appendix A to Part 26, which establishes requirements for securing a location that is not a designated collection site but will be used for a specimen collection(s). The proposed rule would require either an individual to guard access to a public rest room while the collection is occurring, or the posting of a sign to ensure that no unauthorized personnel enter the area during the collection. The current rule requires only the posting of a sign, but stationing an individual to guard access would be at least as effective. The proposed rule would permit an individual to guard access to the collection area in response to stakeholder requests for this flexibility during the public meetings discussed in Section V. The proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.87(f)(2) would retain the third sentence of current Section 2.4(g)(10) in Appendix A to Part 26 that requires a water-coloring agent to be used, if possible, to deter a possible dilution or adulteration attempt when a collection must occur at a location other than the licensee's or other entity's designated collection site.

Proposed § 26.87(f)(3) would amend the second sentence of current Section 2.4(g)(10), which requires that the collector must be the same gender as the donor. If a collector of the same gender is unavailable, the proposed paragraph would permit another person of the same gender who is instructed in the requirements of proposed Subpart E [Collecting specimens for testing] to assist in the collection. The proposed paragraph would require either the collector or the observer to remain outside the area in which the donor will provide the urine specimen to protect the donor's privacy and the integrity of the collection process. The proposed rule would require the observer's identity to be documented on the custody-and-control form so that the observer may be located should any subsequent questions arise with respect to the collection in a review under proposed § 26.39 [Review process for fitness-for-duty policy violations] or legal proceedings. The flexibility to rely on a person of the same gender as an observer, if a collector of the same gender is unavailable, would be consistent with the procedures of other Federal agencies and reduce potential embarrassment to the donor. Therefore, this proposed change would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines, and Goal 7, which is to protect the privacy of individuals who are subject to Part 26.

Proposed § 26.87(f)(4) would require the collector, once he or she is in possession of the donor's specimen, to inspect the area in which the specimen donation occurred for any evidence of a subversion attempt by the donor. The proposed paragraph would amend the fifth and sixth sentences of current Section 2.4(g)(10) in Appendix A to Part 26 that describe the required sequence of actions during a specimen collection and specify that a donor is permitted to flush the toilet after a specimen donation. The proposed rule would eliminate the option for the donor to flush the toilet and would direct the collector to instruct the donor not to flush the toilet. The proposed change would reduce the possibility that a donor could dispose of evidence of a subversion attempt by flushing it down the toilet. Proposed § 26.87(f)(4) would direct the collector to inspect the toilet bowl and area once he or she receives the specimen from the donor. The proposed rule would add these provisions to reduce the opportunities for a donor to subvert the testing process and to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs. The proposed requirement would also meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.87(f)(5) would amend the portions of current Section 2.4(c)(2) in Appendix A to Part 26 that define requirements for maintaining control of specimens that are not collected at a designated collection site. An ''authorized individual,'' including, for example, a security officer or hospital medical technician, would be permitted to maintain physical custody and control of specimens in the proposed paragraph, rather than only the collector, as is required in the current rule. The ''authorized individual'' would be designated by the licensee or other entity and instructed in his or her responsibilities for maintaining custody and control of the specimen. The authorized individual's custody of the specimen would be documented on the custody-and-control form to ensure that the individual may be located should any subsequent questions arise with respect to the collection in a review under proposed § 26.39 [Review process for fitness-for-duty policy violations] or legal proceedings. The proposed change would continue to ensure specimen integrity and security, but would respond to industry experience, as described by stakeholders at the public meetings discussed in Section V. The stakeholders reported that it is sometimes difficult in unusual circumstances, such as the hospital setting, for the collector to maintain physical custody of the specimen until it is prepared for transfer, storage, or shipping. Therefore, the proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements, while continuing to protect the privacy and due process rights of individuals who are subject to Part 26.

Section 26.89 Preparing to Collect Specimens for Testing

A new § 26.89 [Preparing to collect specimens for testing] would describe the preliminary steps to be taken by the collector and donor before specimens are collected for drug and alcohol testing. The proposed section would reorganize and amend portions of the current Appendix A to Part 26, and add several new requirements, as explained below. The proposed rule would present these requirements in a new section to facilitate locating them within the proposed rule to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.89(a) would provide more detailed requirements than those contained in current Section 2.4(g)(3) in Appendix A to Part 26 for actions to be taken if an individual does not appear for testing. The current rule requires the collector to contact an ''appropriate authority'' to determine the actions to take if a donor does not appear for testing. At the public meetings discussed in Section V, some stakeholders indicated that the lack of specificity in the current rule with respect to the actions that the ''appropriate authority'' must take in these circumstances has led some FFD programs to interpret this provision as requiring the imposition of the sanctions for a ''refusal to test'' on an individual who fails to appear, including situations in which there is

clear evidence that the individual had not been informed that he or she was required to appear for testing or was otherwise not at fault for the failure. This is not the intent of the current provision. Therefore, under the proposed paragraph, when informed that an individual who was selected for testing has not appeared at the required time, FFD program management would be required to ensure that the circumstances are investigated and determine whether the individual's absence or tardiness represents an attempt to avoid testing and, therefore, subvert the testing process. The proposed rule would require the licensee or other entity to impose the sanctions specified in proposed § 26.75(b) for a refusal to test only if the investigation identifies evidence that the individual's failure to appear for testing was a subversion attempt. If evidence of a subversion attempt is not identified, the proposed rule would prohibit the licensee or other entity from imposing sanctions and require the individual to be tested at the earliest reasonable and practical opportunity after the individual is located. These more detailed requirements would be added to strengthen the rule's effectiveness in preventing subversion by ensuring that a failure to appear for testing is investigated, which would increase the likelihood of detecting a willful attempt to avoid testing. In addition, the proposed requirements would prevent an individual from being subject to a permanent denial of authorization, as would be required under proposed § 26.75(b), if the individual's failure to appear is determined to be outside of the individual's control or otherwise not a result of a willful attempt to avoid testing. These proposed changes would be made to meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, and Goal 7, which is to protect the due process rights of individuals who are subject to Part 26.

Proposed § 26.89(b) would reorganize and expand current Section 2.4(g)(2) in Appendix A to Part 26, which requires the collector to ensure that an individual who arrives at the collection site for testing is positively identified. The proposed rule would add more detailed requirements for the reasons discussed with respect to each requirement in the proposed paragraph.

Proposed § 26.89(b)(1) would specify the types of photo identification that the licensee or other entity may accept to identify the donor. Identification of the donor by the employer's representative would no longer be permitted. The NRC is not aware of any incidents in which an employer's representative has inaccurately identified an individual who appeared for testing without acceptable identification. However, permitting collectors to rely on identification by an employer's representative provides an opportunity for individuals to conspire to subvert the testing process by substituting the designated donor, who may have engaged in substance abuse, with another individual who has not abused illegal drugs or alcohol. Such a conspiracy could prevent an individual's substance abuse from being detected through testing. Therefore, this proposed revision would be made to provide greater assurance that the individual who appears for testing is the designated donor and, thereby, strengthen the effectiveness of FFD programs in detecting substance abuse. The proposed change would also increase the consistency of Part 26 with access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003, which is Goal 4 of this rulemaking.

Proposed § 26.89(b)(2) would amend the portion of current Section 2.4(g)(2) in Appendix A to Part 26 that directs the collector to stop the collection if the individual cannot be positively identified. By contrast, the proposed paragraph would direct the collector to proceed with the collection and inform FFD program management that the donor did not present acceptable photo identification. The proposed paragraph would require FFD management to take the necessary steps to determine whether the lack of identification is an attempt to subvert the testing process. However, the proposed paragraph would retain the current requirement for the collector to delay the collection until the individual can be identified if it a pre-access test. The proposed changes would be made for several reasons:

First, lessons learned from implementing the current rule have indicated that the large majority of failures to present acceptable identification are the result of miscommunication or other errors that are easily resolved. However, stopping or delaying the specimen collection may alter test results (*e.g.*, if an individual has consumed alcohol, the individual's alcohol test result would show a lower BAC after a delay or may not be detected if testing is not conducted). Therefore, collecting the specimens first and then resolving the individual's identity would assure that test results would be available and accurate from donors who are currently authorized and whose identity has previously been confirmed by the licensee or other entity. Therefore, this proposed change would meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Second, the current requirement to stop the collection without investigating the reasons that the individual is unable to present acceptable identification does not ensure that an attempt by an individual to subvert the testing process is detected. For example, an individual who has engaged in substance abuse could delay specimen collection by claiming to have ''forgotten'' his or her photo identification in his or her car or locker. Permitting the individual to leave the collection site to obtain his or her identification would provide an opportunity for the individual to obtain an adulterant or substitute urine that he or she could then use to subvert the testing process. Steps that FFD program management could take to investigate the reasons that the individual did not present acceptable identification in this instance could include assigning a security officer to accompany the individual to his or her car or locker to verify the individual's claim, as well as to ensure that the individual does not have the opportunity to bring an adulterant or substitute urine back to the collection site. Therefore, the proposed requirement would strengthen the effectiveness of FFD programs in detecting attempts to subvert the testing process.

The requirement to delay the collection until the individual presents acceptable identification if it is a pre-access test would be retained from the current rule at the request of stakeholders during the public meetings discussed in Section V. The stakeholders noted that the current requirement to delay pre-access testing until the individual presents acceptable photo identification does not present a risk to public health and safety or the common defense and security from a possible subversion attempt because the individual would not yet have access to sensitive information, radiological materials, or safety systems and equipment. Further, stakeholders noted that retaining the current provision would save them the expense associated with collecting and testing a specimen that may be collected from the wrong individual. The NRC concurs that it is reasonable to retain the current requirement as it relates to pre-access tests for the reasons given by the stakeholders.

Proposed § 26.89(b)(3) would update current Sections 2.4(g)(4) and 2.4(g)(23)(ii) in Appendix A to Part 26, in which, before any specimens are collected, donors are required to list the prescription and over-the-counter medications they have used within the 30 days before testing. To be consistent with the privacy requirements of the Americans with Disabilities Act [Pub. L. 101–336, July 26, 1990], the proposed rule would eliminate the requirement to list medications prior to specimen collection and testing. The proposed rule would require donors to provide medication information to the MRO only in the event of non-negative confirmatory validity or drug test results in order to enhance their rights to privacy under the rule. This revised requirement would also be consistent with the procedures of other Federal agencies and would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.89(b)(3) would also add a requirement for the collector to explain the testing procedure to the donor. Current Section 2.2(d)(3) in Appendix A to Part 26 requires that individuals who are subject to testing must be provided with standard written instructions setting forth their responsibilities. However, the NRC is aware that these instructions are typically provided to individuals as part of the training that is required under current § 26.21 [Policy communications and awareness training] rather than at the collection site before starting the specimen collection process, which was not the intent of Section 2.2(d)(3) in Appendix A to Part 26. Rather than retaining and clarifying the current provision for standard written instructions, which some individuals have may difficulty comprehending, the proposed rule would adopt the related practices of other Federal agencies, which require the collector to explain the testing procedure to the donor. This proposed change would ensure that individuals are informed of the testing process in which they must participate and their responsibilities within it to meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26. In addition, the proposed revision would enhance the consistency of Part 26 with the requirements of other Federal agencies.

Proposed § 26.89(c) would be added to ensure that the donor is aware of his or her responsibilities to cooperate with the specimen collection process. The proposed paragraph would respond to reports from stakeholders at the public meetings discussed in Section V that some donors have attempted to obstruct or delay the collection process on the basis that the donor's responsibility to cooperate with the collection process is implied, but not clearly specified, in the current rule. Therefore, the proposed paragraph would eliminate that basis for obstructing or delaying collections, which would improve the effectiveness and efficiency of FFD programs, consistent with Goal 3 of this rulemaking.

The proposed paragraph would also require the collector to inform the donor that a failure to cooperate in the specimen collection process would be considered a refusal to test and may result in the permanent denial of authorization under proposed § 26.75(b). Informing donors of the potential consequences of failing to cooperate in the collection process, in advance, would be consistent with Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26. The requirements of this proposed paragraph would also be consistent with the practices of other Federal agencies.

Proposed § 26.89(d) would retain the last two sentences of current Section 2.4(e) in Appendix A to Part 26. These sentences require the collector to conduct only one urine specimen collection at a time and define the point at which the collection process ends, which is when the donor has left the collection site. The proposed paragraph would be retained in this section because it relates to the topic of the proposed section, which is preparing for specimen collections, to ensure that collectors are aware of this requirement before they begin collecting any specimens. The proposed change would improve the organizational clarity of the rule.

Section 26.91 Acceptable Devices for Conducting Initial and Confirmatory Tests for Alcohol and Methods of Use

A new § 26.91 [Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use] would amend current requirements for alcohol testing devices and methods of use. The requirements in the current rule that are related to this topic appear in current § 26.24(g) and Sections 2.4(g)(18) and 2.7(o)(3)(ii) in Appendix A to Part 26. The proposed section would combine these requirements into one section, amend the current requirements, and add others, as explained below. The proposed rule would group these requirements in one section to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.91(a) [Acceptable alcohol screening devices] would be added to permit the use of alcohol screening devices (ASDs) for initial testing and establish requirements for the ASDs that may be used. Acceptable ASDs would include alcohol saliva analysis devices and breath testing devices that are listed on the most recent version of NHTSA's Conforming Products List (CPL) for ASDs (May 4, 2001, 66 FR 22639, and subsequent amendments thereto). Current Section 2.7(o)(3)(ii) in Appendix A to Part 26 limits FFD programs to using only evidential-grade breath testing devices. However, permitting FFD programs to use ASDs listed on NHTSA's CPL for initial alcohol testing would be consistent with other Federal agencies' procedures for workplace alcohol testing. Therefore, the proposed change would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Further, permitting the use of some ASDs for initial alcohol testing would provide increased flexibility in conducting initial alcohol tests. Licensees and other entities may find that, over time, it is less expensive to use a particular ASD than to continue using EBTs for all initial alcohol tests. The option to use alcohol saliva analysis devices also may reduce the burden of alcohol testing for some donors, such as individuals who have impaired lung functioning. The proposed rule's permission to use ASDs that are listed on NHTSA's CPL for ASDs for initial alcohol testing would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements, by increasing FFD programs' flexibility in administering initial alcohol tests.

A new § 26.91(b) [Acceptable evidential breath testing devices] would amend current Section 2.7(o)(3)(ii) in Appendix A to Part 26 and establish new requirements for the EBTs that licensees and other entities must use for confirmatory alcohol breath testing. The proposed paragraph would require licensees and other entities to use EBTs that are listed on the most recent version of NHTSA's CPL for evidential breath testing devices (October 3, 2002, 67 FR 62091, and subsequent amendments thereto) when conducting confirmatory alcohol tests, and permit licensees and other entities to use these EBTs for conducting initial alcohol tests. These EBTs incorporate many improvements in EBT technology and

have been shown to accurately detect BACs at the 0.02 percent level. Therefore, they are the appropriate instruments to use for testing at the revised alcohol cutoff levels specified in proposed § 26.103 [Determining a confirmed positive test result for alcohol].

Further, because these EBTs have been shown to provide valid, reliable, and legally defensible results in other Federal programs that also require workplace alcohol testing, the proposed requirement to use these EBTs would permit two additional proposed changes to the alcohol testing procedures contained in current Section 2.4(g)(18) in Appendix A to Part 26: (1) Collecting only one breath specimen for the initial alcohol test and one for the confirmatory test in proposed §§ 26.95(c) and 26.101(c), rather than the two specimens that are currently required for each test; and (2) conducting both the initial and confirmatory tests (if a confirmatory test is required) using the same EBT in proposed § 26.101(d). As discussed further with respect to proposed §§ 26.95(c) and 26.101(c) and (d), these proposed changes to the current alcohol testing requirements would improve the efficiency of alcohol testing while continuing to provide valid, reliable, and legally defensible results that are necessary to protect donor's rights under workplace alcohol testing programs. The use of these improved EBTs is similarly required for confirmatory alcohol testing and permitted for initial testing under 49 CFR Part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs' (65 FR 41944; August 9, 2001). Therefore, this proposed change would also meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines; Goal 3, which is to improve the efficiency of FFD programs; and Goal 5, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.91(c) [EBT capabilities] would be added to specify the required capabilities of the EBTs that licensees and other entities may use for initial alcohol testing and must use for confirmatory alcohol tests. The EBT capabilities listed in proposed § 26.91(c)(1)–(c)(3) are necessary to ensure that a test result can be uniquely associated with the instrument used, the time of testing, and the donor. These capabilities are necessary in order to establish an unimpeachable chain of custody for alcohol test results as well as permit the accurate identification of any test results that may have been affected by instrument malfunctions that are discovered later through additional quality assurance checks. The EBT capabilities listed in proposed § 26.91(c)(4)–(c)(6) would ensure that test results will be accurate by permitting collectors to verify that the instrument is functioning properly before each test and there will be no carryover effects from previous testing. These capabilities would improve the effectiveness and efficiency of confirmatory alcohol testing by limiting the need to cancel test results due to instrument errors, as required under proposed § 26.91(e)(3). Using EBTs that have the required capabilities for confirmatory alcohol tests would protect donors' rights to accurate test results, provide greater assurance that test results will withstand any legal challenges, and improve an FFD programs' ability to identify tests that may have been affected by instrument errors. Therefore, the proposed requirements would meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

Proposed § 26.91(d) [Quality assurance and quality control of ASDs] would be added to establish quality assurance and quality control requirements for ASDs. These proposed requirements are necessary to ensure that initial tests that are conducted using an ASD do not yield false negative test results. If an ASD provides a false negative test result, a donor who has a BAC that exceeds the cutoff levels established in this part would not be detected by the test and may be permitted to perform the job duties that require him or her to be subject to this part, thereby creating an unacceptable risk to public health and safety or the common defense and security. The proposed (and current) rule would require confirmatory testing if initial alcohol test results are positive, so false positive test results from an ASD would lead to confirmatory testing, which would provide accurate test results. False positive test results reduce the efficiency of FFD programs and inconvenience donors by causing them to be subject to unnecessary confirmatory testing, but do not pose any risks to public health and safety or the common defense and security. However, confirmatory testing is not required if the result of an initial alcohol test result is negative. Therefore, the quality assurance and quality control requirements contained in this proposed paragraph would be necessary to maintain the effectiveness of FFD programs, which is Goal 3 of this rulemaking.

Proposed § 26.91(d)(1) would be added to require FFD programs to implement the most recent version of the quality assurance plan that a manufacturer has submitted to NHTSA for any ASD that the licensee or other entity uses for initial alcohol testing. In order to obtain NHTSA approval for an ASD, the manufacturer of the device must submit a quality assurance plan that (1) specifies the methods that must be used for quality control checks, (2) the temperatures at which the ASD must be stored and used, (3) the shelf life of the device, (4) environmental conditions (*e.g.*, temperature, altitude, humidity) that may affect the ASD's performance, (5) instructions for its use and care, (6) the time period after specimen collection within which the device must be read, where applicable, and (7) the manner in which the reading is made. The proposed paragraph would require licensees and other entities who intend to use an ASD to obtain and implement the most recent version of the manufacturer's quality assurance plan to ensure that the ASD will not provide false negative test results from improper storage or use. As discussed with respect to proposed § 26.91(d), the proposed provision would be necessary to maintain the effectiveness of FFD programs that rely on ASDs for initial alcohol testing.

Proposed § 26.91(d)(2) would be added to prohibit licensees and other entities from using an ASD that fails the quality control checks that would be specified in the most recent version of the manufacturer's quality assurance plan or that has passed its expiration date. This proposed prohibition would be necessary to ensure that test results from using the ASD are accurate both to protect public health and safety and donors' rights to accurate test results under the rule.

Proposed § 26.91(d)(3) would be added to require licensees and other entities to follow the device use and care requirements that would be specified in proposed paragraph (e) of this section for an ASD that tests breath specimens. The proposed requirement would be added because some ASDs test specimens of oral fluids while others test breath specimens, and some ASDs that test breath specimens also appear on NHTSA's CPL for evidential breath testing devices (October 3, 2002, 67 FR 62091, and subsequent amendments thereto). Those ASDs that do test breath specimens and would be used for confirmatory testing have more detailed quality assurance and quality control

provisions because their results must be legally defensible.

Proposed § 26.91(e) [Quality assurance and quality control of EBTs] would establish new quality assurance and quality control requirements for EBTs. The proposed requirements would be consistent with those of other Federal agencies that require workplace alcohol testing and, therefore, would update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines, as follows:

Proposed § 26.91(e)(1) would add a requirement that licensees and other entities must implement the most recent version of the manufacturer's instructions for the use and care of the EBT consistent with the quality assurance plan submitted to NHTSA for the EBT, including the frequency of external calibration checks. An EBT manufacturer is required to submit to NHTSA a quality assurance plan that addresses methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. The proposed rule would require licensees and other entities to perform external calibration checks at the manufacturer's recommended intervals, at a minimum. These calibration intervals take into account factors such as frequency of use, environmental conditions (*e.g.*, temperature, humidity, altitude), and type of operation (*e.g.*, stationary or mobile). Therefore, this proposed provision would ensure that the EBT will not provide false test results from improper storage or use.

Proposed § 26.91(e)(2) would add a requirement for licensees and other entities to use only calibration devices appearing on NHTSA's CPL for ''Calibrating Units for Breath Alcohol Tests'' when conducting external calibration checks. This proposed requirement is necessary to ensure that the calibrating units used by licensees and other entities meet minimum standards and provide accurate results.

Proposed § 26.91(e)(3) would be added to address circumstances in which an EBT fails an external calibration check. The proposed paragraph would require the licensee or other entity to cancel any positive test results from tests that were conducted during the period since the EBT last passed an external calibration check. This proposed requirement would protect donors' right to due process under the rule because positive test results from an EBT that has failed an external calibration check are questionable and donors should not be subject to sanctions on the basis of these test results. Because most EBT manufacturers' recommended intervals are one month, licensees and other entities may choose to conduct the calibration checks more frequently in order to avoid the proposed test cancellations, should an EBT fail an external calibration check. The proposed paragraph would also require the licensee or other entity to take the EBT out of service. An EBT that has failed an external calibration check must be taken out of service to avoid inaccurate reporting of breath alcohol test results that could result either in the imposition of sanctions on a donor who has not abused alcohol or the failure to identify a donor who has.

Proposed § 26.91(e)(4) would be added to require that inspection, maintenance, and calibration of the EBT must be performed by its manufacturer or a maintenance representative who is certified by the manufacturer, a State health agency, or other appropriate State agency. This proposed provision would ensure that inspection, maintenance, and calibration of EBTs are performed by qualified personnel for two reasons: (1) To ensure that EBTs used in Part 26 programs continue to provide accurate test results, and (2) because the experience of other Federal agencies that require workplace alcohol testing has demonstrated that such stringent EBT inspection, maintenance, and calibration requirements are necessary to withstand legal challenges to alcohol test results.

Section 26.93 Preparing for Alcohol Testing

A new § 26.93 [Preparing for alcohol testing] would expand on current Section 2.4(g)(18) in Appendix A to Part 26, which specifies procedures for alcohol testing. The proposed rule would provide more detailed procedures than the current paragraph to increase the consistency of these procedures with those of other Federal workplace alcohol testing programs as well as consistency among the alcohol testing procedures of Part 26 programs. These more detailed requirements would be added for the reasons discussed in Section IV. B.

Proposed § 26.93(a) would contain more detailed procedures for implementing the current requirement in the first sentence of current Section 2.4(g)(18) in Appendix A, which instructs collectors to delay alcohol breath testing for 15 minutes if the donor has engaged in any of the activities listed (*e.g.*, smoking, regurgitation of stomach contents from vomiting). Proposed § 26.93(a)(1)–(a)(6) would require the collector to provide the donor with more detailed information about mouth alcohol and the testing process than is currently required and document that the information is provided. Providing more detailed requirements for the 15-minute waiting period would improve the effectiveness and efficiency of the alcohol testing process by reducing false positive test results that are due to residual mouth alcohol or other substances that could potentially trigger a false positive result. Proposed § 26.93(a)(1) would retain the current requirement for the collector to ask the donor about behaviors such as eating and drinking that have may have occurred within the 15 minutes before an alcohol test and add a requirement for the collector to advise the donor to avoid these activities during the collection process. Proposed § 26.93(a)(2) would permit alcohol testing to proceed if the donor states that none of the activities listed in § 26.93(a)(1) had occurred, while proposed § 26.93(a)(3) would retain the current requirement for a 15-minute waiting period before a donor could be tested if he or she had engaged in the activities listed in proposed § 26.93(a)(1). Proposed § 26.93(a)(4) would add a requirement for the collector to explain that it is to the donor's benefit to avoid the activities listed in § 26.93(a)(1) during the collection process. Proposed § 26.93(a)(5) would add a requirement for the collector to explain to the donor that initial and confirmatory alcohol tests will be conducted at the end of the waiting period regardless of whether the donor has engaged in any of the activities listed in § 26.93(a)(1). Proposed § 26.93(a)(6) would add a requirement for the collector to document that the instructions were communicated to the donor. The proposed additional requirements for the collector to communicate with the donor about the potential effects on test results of the activities listed in proposed § 26.93(a)(1) would ensure that donors clearly understand the reasons for avoiding those activities and the potential consequences of engaging in them in order to protect their rights to due process under the rule. The proposed requirement for the collector to document that the instructions were communicated to the donor would be necessary to ensure that the collector does not inadvertently omit the instructions and improve the legal defensibility of the collection procedure, should a donor challenge it.

Proposed § 26.93(b) would be added to require collectors to minimize delays in administering for-cause drug and alcohol tests and complete alcohol testing before collecting a specimen for drug testing. These proposed requirements would decrease the likelihood that a donor's test results would fall below the program's cutoff levels as a result of metabolic processes over time, which could prevent the detection of proscribed alcohol consumption or drug use. Delays between the time at which a donor reports for testing and the time at which testing occurs would continue to be permitted for tests conducted under conditions other than for cause, because, in contrast to for-cause testing, there would be no reason to believe that an individual may have used drugs or alcohol in violation of the FFD policy. Therefore, there would be no basis for a concern that metabolic processes may cause inaccurate test results. The proposed provision would be consistent with the related regulations of other Federal agencies.

Section 26.95 Conducting an Initial Test for Alcohol Using a Breath Specimen

Proposed § 26.95 [Conducting an initial test for alcohol using a breath specimen] would replace the portions of current Section 2.4(g)(18) in Appendix A to Part 26 that specify procedures for conducting an initial test for alcohol. Collectors would follow the procedures in this section when using ASDs that test breath specimens and EBTs. The proposed section would increase the consistency of Part 26 with the procedures of other Federal agencies for workplace alcohol testing. Consistent with other agencies' procedures, the proposed rule would eliminate the requirement in current Section 2.4(g)(18) in Appendix A to Part 26 for collecting a second breath specimen for the initial alcohol test. The experience of other Federal agencies indicates that the current Part 26 requirement for two breath specimens is unnecessary to obtain a valid, reliable, and legally defensible test result, if the procedures specified in the proposed section are followed. Therefore, the proposed rule would amend the current procedures to reduce the burden on FFD programs and donors that is associated with collecting two breath specimens for the initial alcohol test, while continuing to ensure that breath alcohol testing provides accurate results.

Proposed § 26.95(a) would be added to require the collector to start breath testing as soon as reasonably practical after the donor indicates that he or she has not engaged in any activities that may result in the presence of mouth alcohol or after the 15-minute waiting period, if required. The phrase, ''as soon as reasonably practical,'' would be added to the proposed paragraph in response to stakeholder comments at the public meetings discussed in Section V. The intent of the provision is for the collector to conduct the initial alcohol test as soon as the individual has received the instructions specified in proposed § 26.93 [Preparing for alcohol testing] in order to ensure the accuracy of the test result, because delays in conducting the test increase the possibility that the donor may inadvertently engage in a behavior that could result in the presence of mouth alcohol as well as permit the donor's metabolism to lower the alcohol concentration in the specimen, if the donor has consumed alcohol. However, the stakeholders noted that when preparing for outages, in which it is sometimes necessary to test large numbers of individuals, collectors often provide the instructions in proposed § 26.93 to groups of donors at the same time and it is not feasible to test each one immediately after providing the instructions. Therefore, the proposed rule would add the phrase, ''as soon as reasonably practical,'' to permit reasonable delays in testing associated with outage planning.

Proposed § 26.95(b)(1) would permit the donor to select the mouthpiece to be used for testing, at the collector's discretion. Permitting the donor to select the mouthpiece would not be required, but may increase the donor's confidence in the integrity of the testing process by assuring the donor that the selection of the mouthpiece is random, if he or she is concerned that a collector would attempt to subvert the testing process by, for example, selecting a mouthpiece that had been contaminated with alcohol or other means of tampering with the testing device. The NRC is not aware of any instances in Part 26 programs in which a donor has accused a collector of altering an alcohol testing device. However, the experience of other Federal agencies who similarly require workplace alcohol testing indicates that taking steps to reduce potential donor concerns about the integrity of the testing process increases donors' willingness to participate in the testing procedures and reduces the potential for legal challenges.

Proposed § 26.95(b)(2) would instruct the collector to open the mouthpiece packaging and insert it into the device in view of the donor. The proposed requirement to insert the mouthpiece into the device in the view of the donor would be added for the same reason described with respect to proposed § 26.95(b)(1).

Proposed § 26.95(b)(3) would require the donor to blow into the mouthpiece for at least 6 seconds in order to obtain an adequate breath sample. The requirement to obtain the specimen from the end of the breath exhalation in current Section 2.4(g)(18) in Appendix A to Part 26 would be deleted as unnecessary based upon improvements to breath-testing technology.

Proposed § 26.95(b)(4) would require the collector to show the test result to the donor. This proposed requirement is consistent with current industry practices and is intended to increase donor confidence in the integrity of the testing process by ensuring that both the donor and the collector have access to the same information about the donor's test result. The proposed requirement is consistent with Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26, by ensuring that donors are aware of the information used by the collector to determine whether an alcohol test result is positive or negative.

Proposed § 26.95(b)(5) would require the collector to ensure that the test result record can be associated with the donor and is maintained secure, consistent with the many provisions throughout the current and proposed rules that the chain-of-custody must be maintained for specimens and the associated documentation of test results. Proposed §§ 26.129 and 26.159 [Assuring specimen security, chain of custody, and preservation] would establish similar requirements for urine specimens at licensee testing facilities and HHS-certified laboratories, respectively.

Proposed § 26.95(c) would be added to require the collection of only one breath specimen for the initial test, unless problems in the collection require that the collection must be repeated. Problems in the collection may include, but would not be limited to, device malfunctions or a donor's inability to provide an adequate breath specimen on the first try. If a repeat collection is required, the collector would rely on the result from the first successful collection in determining the need for confirmatory alcohol testing. If the procedures specified in this proposed section are followed, relying on one breath specimen for the initial test, rather than the two required in the current rule, would increase the consistency of Part 26 collection procedures with those of other Federal

agencies, consistent with Goal 1 of this rulemaking. The proposed provision would also reduce the time required for breath specimen collections without compromising the accuracy, validity, or reliability of the test results. Therefore, the proposed provision would also meet Goal 3 of this rulemaking, which is to improve the efficiency of FFD programs.

Section 26.97 Conducting an Initial Test for Alcohol Using a Specimen of Oral Fluids

A new § 26.97 [Conducting an initial test for alcohol using a specimen of oral fluids] would establish requirements for conducting initial alcohol tests using an ASD for testing oral fluids specimens. The proposed rule would permit licensees and other entities to rely on ASDs that test oral fluids for the reasons discussed with respect to proposed § 26.83(a). The proposed procedures for conducting alcohol testing with an ASD for testing oral fluids would incorporate the related requirements from 49 CFR Part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs'' (65 FR 41944; August 9, 2001) and would be added to the proposed rule to ensure that initial alcohol tests of oral fluids provide accurate and legally defensible test results.

Proposed § 26.97(a) would be added to specify the procedures that the collector would follow in using an ASD for testing oral fluids, as follows:

Proposed § 26.97(a)(1) would require the collector to check the expiration date on the device and show it to the donor. Some devices degrade during storage. Therefore, this step would be necessary to assure both the donor and the collector that the device can be expected to function properly.

Proposed § 26.97(a)(2) would require the collector to open an individually wrapped or sealed package containing the device in the presence of the donor. The proposed rule would add the requirement for the collector to open the package in the presence of the donor for the reasons discussed with respect to proposed § 26.95(b)(1).

Proposed § 26.97(a)(3) would require the collector to offer the donor a choice of using the device or having the collector use it. If the donor chooses to use the device, the collector would be required to provide instructions for its proper use. The proposed rule would require the collector to offer the donor the choice of using the device to increase the donor's confidence in the integrity of the testing process, as discussed with respect to proposed § 26.95(b)(1).

Proposed § 26.97(a)(4) would require the collector to gather oral fluids in the proper manner if the donor chooses not to use the device, or in cases in which a second test is necessary because the device failed to activate. In addition, the collector would be required to wear single-use examination or similar gloves while doing so and change them following each test. Proposed § 26.97(a)(5) would require the collector to follow the manufacturer's instructions to ensure that the device has activated. The proposed requirements in these paragraphs to follow the device manufacturer's instructions for collecting the specimen and verify that the device has activated would be added to ensure that the collection is properly conducted. The proposed requirement to use single-use examination gloves would ensure that the collector and donor are protected from possible infection from exposure to body fluids.

Proposed § 26.97(b) would be added to specify the procedures that the collector would follow if the first attempt to conduct the test using the ASD fails for any reason, including, but not limited to, the ASD failing to activate or the device is dropped on the floor.

Proposed § 26.97(b)(1) would require the collector to discard the device and conduct another test using a new device that has been under the collector's control if the first attempt fails. The proposed rule would require the second device used to have been under the collector's control to ensure that there have been no opportunities for the donor or another individual to substitute the new device with another that has been altered to provide a false negative test result. This proposed requirement would be necessary to protect the integrity of the collection process.

Proposed § 26.97(b)(2) would require the collector to record the reason for the new test. The proposed rule would require documentation of the reason for the new test to ensure that the information is available, should any questions arise with respect to the collection procedure in a review conducted under proposed § 26.39 [Review process for fitness-for-duty policy violations] or legal proceedings.

Proposed § 26.97(b)(3) would require the collector to offer the donor the choice of using the device or having the collector use it, unless the collector concludes that the donor was responsible for the new test needing to be conducted. The proposed rule would require the collector to offer the donor the choice of using the device for the reasons discussed with respect to proposed § 26.95(b)(1). The requirement for the collector to use the device if he or she concludes that the donor was responsible for the second test needing to be conducted would enhance the efficiency of the collection procedure by ensuring that the second collection is conducted properly.

Proposed § 26.97(b)(4) would require the collector to repeat the collection procedures outlined in proposed § 26.97(a) for the second collection.

If the second collection attempt fails, proposed § 26.97(c) would be added to direct the collector to use an EBT to perform the initial alcohol test instead. The proposed rule would require the collector to use an EBT to perform the initial test after two failed attempts at testing oral fluids specimens to ensure that a valid test result is obtained to enhance the efficiency of the collection procedure by changing the method used to conduct the test.

If the specimen collection using the ASD for testing oral fluids is successful, proposed § 26.97(d) would instruct the collector to follow the device manufacturer's instructions for reading the result and show the result to the donor. The proposed rule would prohibit the collector from reading the result sooner than instructed by the device manufacturer because some devices require several minutes after specimen collection to provide an accurate result, but no more than 15 minutes in all cases. The proposed requirement for the collector to show the test result to the donor is intended to increase donor confidence in the integrity of the testing process by ensuring that both the donor and the collector have access to the same information about the donor's test result. The proposed paragraph would also require the collector to record the test result and that an ASD was used to document the collection and test and ensure that the information is available, should any questions arise with respect to the collection procedure in a review conducted under proposed § 26.39 [Review process for fitness-for-duty policy violations], or legal proceedings.

In order to protect collectors and donors from any possible biohazards, proposed § 26.97(e) would be added to prohibit the reuse of any devices, swabs, gloves; and other materials used in collecting oral fluids.

Section 26.99 Determining the Need for a Confirmatory Test for Alcohol

A new § 26.99 [Determining the need for a confirmatory test for alcohol] would amend the existing requirements in current § 26.24(g) and the portion of

Section 2.7(e)(1) in Appendix A to Part 26 that addresses cutoff levels for alcohol testing. The proposed rule would amend the current requirements for consistency with a new approach to determining positive alcohol test results in proposed § 26.103 [Determining a confirmed positive test result for alcohol]. The proposed approach would be adopted because some licensees have not taken appropriate action when a donor has obtained alcohol test results just below the current 0.04 percent BAC cutoff level after the donor has been at work for several hours. A BAC below 0.04 percent after the donor has been at work for several hours allows very little doubt that the donor has had an unacceptably high BAC, and has probably been impaired, at some time during the work period. Therefore, new cutoff levels for alcohol testing would be established in proposed §§ 26.99 and 26.103 that would take into account the average rate at which individuals metabolize alcohol over time. In proposed § 26.99(a), the cutoff level for the initial alcohol test result would be decreased from 0.04 to 0.02 percent BAC and a confirmatory alcohol test would be required if a donor's initial test result is 0.02 percent BAC or higher. In addition, in proposed § 26.99(b), the collector would be required to record the time at which the initial alcohol test result is obtained, so that the length of time during which the donor has been in a work status could be calculated to determine whether a confirmatory test result is positive, in accordance with proposed § 26.103. The proposed changes in the initial alcohol test cutoff level and testing procedure are necessary to support the provisions of proposed § 26.103, which would require the collector to declare an alcohol test as positive if the donor's confirmatory test result is 0.03 percent or higher after the donor has been on duty for one hour, or 0.02 percent or higher after the donor has been on duty for 2 hours. The revised lower cutoff level for the initial test of 0.02 percent BAC would permit licensees and other entities to identify donors who have had a BAC of 0.04 percent or higher while in a work status, and to initiate confirmatory testing for those individuals.

Section 26.101 Conducting a Confirmatory Test for Alcohol

A new § 26.101 [Conducting a confirmatory test for alcohol] would be added to provide detailed procedures for conducting confirmatory breath alcohol tests. These proposed procedures would incorporate the related requirements from 49 CFR Part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs'' (65 FR 41944; August 9, 2001), which would be added to the proposed rule to ensure that confirmatory breath alcohol tests provide accurate and legally defensible test results when using the EBTs that would be required in proposed § 26.91(b) [Acceptable evidential breath testing devices] and relying upon one breath specimen for confirmatory testing, as would be required in proposed paragraph (c) of this section.

Proposed § 26.101(a) would require licensees and other entities to conduct the confirmatory test as soon as possible following the initial alcohol test, and in all cases, no later than 30 minutes after the initial test. The proposed rule would add this requirement to reduce the possibility that alcohol metabolism will cause a confirmatory test to provide a result falling below the applicable cutoff level. Current Section 2.4(g)(18) in Appendix A to Part 26 does not require that confirmatory testing must be conducted as soon as possible after a positive initial alcohol test result is obtained, although licensees follow this practice. However, the 30-minute limit would be added because some FFD program personnel may be tested under DOT procedures, as permitted in proposed § 26.31(b)(2), and an EBT that is suitable for confirmatory testing may not be immediately available at the collection site, such that transport to another collection site is required. The 30-minute interim period would be unnecessary at licensees' and other entities' collection sites because licensees' and other entities' collection sites would have the capability to conduct confirmatory tests with an EBT, as required under proposed § 26.87(a). Therefore, except in these unusual circumstances, licensees and other entities would be expected to continue their current practice of conducting the confirmatory test immediately after a donor's initial test result is determined to be positive.

Proposed § 26.101(b) would be added to specify procedures for conducting a confirmatory alcohol test.

Proposed § 26.101(b)(1) and (b)(2) would require the collector to conduct an air blank before beginning the confirmatory test and verify that the air blank reading is 0.00. These proposed steps are necessary to ensure that the EBT is functioning properly before the test begins.

Proposed § 26.101(b)(3) would require the collector to take the EBT out of service if a second air blank test reading is above 0.00. This proposed step is necessary because a reading above 0.00 on an air blank test indicates that the EBT is not functioning properly and may provide inaccurate test results.

Proposed § 26.101(b)(4)–(b)(7) would be added to specify requirements for handling the EBT's mouthpiece; reading the test number displayed on the EBT; blowing into the EBT; and showing, recording, and documenting the result displayed on the EBT, respectively. The necessity for these steps would be the same as for those discussed with respect to the related steps in proposed § 26.95 [Conducting an initial test for alcohol using a breath specimen]. However, the proposed rule would not permit the donor to insert the mouthpiece into the EBT for the confirmatory test, because it is necessary to ensure that the confirmatory test is conducted strictly in accordance with the proper procedures to produce a result that meets evidential standards. Meeting evidential standards would be necessary if any questions arise with respect to the collection procedure in a review conducted under proposed § 26.39 [Review process for fitness-for-duty policy violations], or legal proceedings.

Proposed § 26.101(c) would be added to require that only one breath specimen must be collected for the confirmatory alcohol test, unless problems in the collection require that the collection be repeated. If a repeat collection is required, the collector would rely upon the result from the first successful collection in determining the confirmatory test result. As discussed with respect to proposed § 26.95(c), if the procedures specified this proposed section are followed, relying on one breath specimen for the initial test, rather than the two required in the current rule, would increase the consistency of Part 26 collection procedures with those of other Federal agencies, and reduce the time required for breath specimen collections without compromising the accuracy, validity, or reliability of the test results. The proposed paragraph would also prohibit licensees and other entities from combining or averaging results from more than one test in order to arrive at the confirmatory test result. These calculations, which are required in current Section 2.4(g)(18) in Appendix A to Part 26, would no longer be necessary with use of the EBTs specified in proposed § 26.91(b). The proposed change would meet Goal 3 of this rulemaking, which is to improve the efficiency of FFD programs.

Proposed § 26.101(d) would amend the portion of current Section 2.4(g)(18) in Appendix A of Part 26 that requires using a different EBT for conducting the confirmatory alcohol test than the EBT that the collector used for initial alcohol

testing. The proposed rule would permit the use of the same EBT for both initial and confirmatory alcohol testing, rather than require the use of two different EBTs. The licensee or other entity would obtain one breath specimen for initial alcohol testing and one for confirmatory testing, if necessary, but would be permitted to conduct both tests using the same EBT. This proposed change would be made because improvements in EBT technology assure that valid and reliable test results may be obtained from a single EBT, if the proposed specimen collection and quality assurance procedures in this part are followed. Reducing the number of breath specimens required for alcohol testing would not only reduce the costs associated with alcohol testing, but would also reduce the burden on donors that is imposed by the collection process. Use of the same EBT for initial and confirmatory testing is consistent with the procedures of other Federal agencies for workplace alcohol testing.

Section 26.103 Determining a Confirmed Positive Test Result for Alcohol

A new § 26.103 [Determining a confirmed positive test result for alcohol] would amend the current cutoff level for determining whether a confirmatory alcohol test result is positive, as specified in current § 26.24(g) and Section 2.7(f)(2) in Appendix A to Part 26. The proposed rule would establish new cutoff levels that take into account the length of time the donor has been in a work status for the reasons discussed with respect to proposed § 26.99 [Determining the need for a confirmatory test for alcohol]. Proposed § 26.103(a)(1) would retain the 0.04 percent BAC in current § 26.24(g) and Section 2.7(f)(2) in Appendix A to Part 26 as the cutoff level for a confirmed positive alcohol test result at any time, regardless of the length of time the donor has been in a work status. Proposed § 26.103(a)(2) and (a)(3) would establish new cutoff levels for positive alcohol test results that are above the 0.02 percent BAC cutoff level on the initial test and do not meet or exceed the 0.04 percent BAC cutoff level upon confirmatory testing, but indicate that the donor had a BAC of 0.04 percent or greater while in a work status or had consumed alcohol while on duty. The cutoff levels and time periods in proposed § 26.103(a)(2) and (a)(3) are based upon the average rate at which normal metabolic processes reduce an individual's BAC over time, which is about 0.01 percent BAC per hour. Therefore, a donor whose BAC is measured as 0.03 percent after the donor has been in a work status for one hour would have had a BAC of approximately 0.04 percent when he or she reported for work an hour ago. Through the same metabolic processes, a donor whose BAC is measured as 0.02 percent after he or she has been in a work status for 2 hours would also have had a BAC of approximately 0.04 percent when he or she reported for work 2 hours ago. These proposed changes would improve the effectiveness of FFD programs by ensuring that confirmatory alcohol testing identifies donors who have been impaired from alcohol use while on duty and, therefore, may have posed a risk to public health and safety.

Proposed § 26.103(b) would be added to strengthen FFD programs by requiring licensees and other entities to address circumstances in which a donor's confirmatory alcohol test result is greater than 0.01 percent BAC when the individual has been in a work status for 3 hours or more, but his or her BAC falls below the cutoff levels in proposed § 26.103(a). The proposed rule would require the collector to declare the test as negative because some of the EBTs that licensees and other entities would be permitted to use for confirmatory alcohol testing under the proposed rule have not been thoroughly evaluated by NHTSA for accurately estimating BAC levels below 0.02 percent. However, if an individual has an alcohol test result above 0.01 percent BAC, and has been in a work status for 3 hours or more, the test result would provide a reason to believe that the individual has been impaired while on duty. Therefore, the proposed provision would require the licensee or other entity to ensure that the donor's alcohol use is evaluated, a determination of fitness is performed, and that the results of the determination of fitness indicate that the donor is fit to safely and competently perform his or her duties before the individual is permitted to perform the duties that require him or her to be subject to this part after testing. This proposed change would strengthen the effectiveness of FFD programs by ensuring that the alcohol use of individuals who may have been impaired when reporting for duty is assessed to determine whether such individuals' alcohol use is problematic and may pose a future risk to public health and safety and the common defense and security.

Current Section 2.4(g)(19) in Appendix A to Part 26, which establishes requirements for collecting a blood specimen for alcohol testing, would be deleted in its entirety because blood testing for alcohol, at the donor's discretion, would no longer be permitted in the proposed rule. The reasons for eliminating blood testing for alcohol from the proposed rule discussed with respect to proposed § 26.83(a).

Section 26.105 Preparing for Urine Collection

A new § 26.105 [Preparing for urine collection] would be added to describe the preliminary steps for collecting a urine specimen for drug testing. This proposed section would reorganize the requirements in current Section 2.4(g)(5)–(g)(7) in Appendix A to Part 26 by separating alcohol and urine specimen collection procedures into separate sections of the proposed rule for organizational clarity. The proposed section would also establish several new requirements that would be added to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.105(a) would revise current Section 2.4(g)(5) in Appendix A to Part 26, which requires the donor to remove any unnecessary outer garments and belongings that might conceal items or substances that could be used to tamper with a urine, breath, or blood specimen. The proposed paragraph would eliminate the references to blood and breath specimens in the current paragraph. Reference to blood specimens would be eliminated because blood testing for alcohol, at the donor's discretion, would no longer be permitted in the proposed rule, as discussed with respect to proposed § 26.83(a). Reference to breath specimens would be eliminated in the proposed paragraph because the proposed rule would present requirements related to preparing for alcohol testing in a separate section, proposed § 26.93 [Preparing for alcohol testing], for organizational clarity.

Proposed § 26.105(b) would be added to require the donor to empty his or her pockets and display the items contained in them. The proposed requirement for the collector to examine the contents of the donor's pockets would increase the likelihood of detecting items (*e.g.*, a vial of powdered urine, bleach, a portable heating unit, a false penis or any other tube or device that may be used to replicate the function of urinary excretion) that could be used to adulterate or substitute the specimen in a subversion attempt. The collector would be required to use his or her judgment in determining whether an item found in the donor's pockets indicates a clear intent to attempt to subvert the testing process. For example, whereas a container of urine

found in a donor's pocket would be clear evidence of an intent to subvert the testing process, a container of eye drops, which could be used to adulterate the specimen, would, in most cases, be unlikely to indicate an intent to subvert the testing process. Should the collector identify an item that indicates a possible intent to subvert the testing process, the proposed paragraph would require him or her to contact the FFD program manager or MRO in order to obtain direction regarding the need for a directly observed collection. If the collector identifies an item that could be used to tamper with the specimen, but does not indicate an intent to subvert testing, then the collector would secure the item and continue with the collection. These proposed requirements would be added to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines, as well as Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by improving the ability of the collector to identify attempts to subvert the drug testing process. The proposed requirement for the donor to permit the collector to make this examination would be added in response to stakeholder requests at the public meetings discussed in Section V to ensure that donors understand that they must cooperate with the examination.

Proposed § 26.105(c) would retain current Section 2.4(g)(6) in Appendix A to Part 26, which requires the individual to be instructed to wash his or her hands prior to urination. The proposed rule would make two minor editorial changes to the current provision for clarity in the language of the proposed rule. The proposed rule would clarify that the collector is to instruct the donor to wash and dry his or her hands and would replace the term, ''individual,'' with the term, ''donor.''

Proposed § 26.105(d) would retain current Section 2.4(g)(7) in Appendix A to Part 26, which requires the donor to remain in the presence of the collection site person and not to have access to any source of water or other materials that could be used to tamper with the specimen. The proposed rule would make two minor editorial changes to the current provision for clarity in the language of the rule. The proposed rule would replace the term, ''collection site person,'' with the simpler term, ''collector,'' and the term, ''individual,'' with the term, ''donor.''

Proposed § 26.105(e) would be added to permit the donor, at the collector's discretion, to select the specimen collection container that he or she will use. Permitting the donor to select the collection kit would not be required, but may increase the donor's confidence in the integrity of the testing process by assuring the donor that the selection of the collection kit is random, if he or she is concerned that a collector would attempt to subvert the testing process by, for example, selecting a kit that had been contaminated with a substance that would produce a positive or adulterated test result in order to entrap the donor. The importance of providing assurance to the donor regarding the integrity of the collection process is discussed with respect to proposed § 26.95(b)(1). The proposed paragraph would also prohibit the donor from taking collection kit materials (such as the specimen label) other than the collection container into the private area used for urination in order to ensure that a donor could not tamper with the other collection kit materials and thereby disrupt the chain of custody for the urine specimen. The proposed paragraph would be consistent with the related requirements of other Federal agencies and so would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Section 26.107 Collecting a Urine Specimen

Proposed § 26.107 [Collecting a urine specimen] would amend current Section 2.4(g)(8), (g)(9), and (g)(12) in Appendix A to Part 26 to update Part 26 urine specimen collection procedures and incorporate advances in other relevant Federal rules and guidelines, consistent with Goal 1 of this rulemaking.

Proposed § 26.107(a)(1) would be added to specify the instructions that the collector would be required to provide to the donor. The proposed paragraph would require the collector to instruct the donor to go into the room or stall used for urination, provide a specimen of the quantity that has been predetermined by the licensee or other entity, not flush the toilet, and return with the specimen as soon as the donor has completed the void. The proposed rule would require the collector to provide these instructions to the donor so that the donor would understand his or her responsibilities with respect to the urine collection procedure. In addition, the instructions would be necessary to implement other provisions of the proposed rule, as follows: The quantity of urine that the collector would instruct the donor to provide would be based upon the requirements of the licensee's or other entity's drug testing program, as discussed with respect to proposed § 26.109 [Urine specimen quantity]. The collector would instruct the donor not to flush the toilet so that the collector may inspect the private area in which the donor voided after receiving the specimen, as discussed with respect to proposed paragraph (c) of this section. The collector would instruct the donor to return with the specimen as soon as the donor has completed the void in order to minimize the possibility that the urine specimen would cool and its temperature would fall below the acceptable specimen temperature range specified in proposed § 26.111(b).

Proposed § 26.107(a)(1) would further amend current Section 2.4(g)(8) in Appendix A to Part 26, which states that the individual may provide his/her urine specimen in the privacy of a stall or otherwise partitioned area that protects individual privacy. For clarity, the proposed paragraph would replace ''may'' in the current rule with ''shall'' to indicate that the area in which the donor will urinate must provide for individual privacy. The proposed rule would also add an exception to the current requirement for privacy in the case of a directly observed collection. This proposed change would be made for greater accuracy in the language of the rule, because the requirement for individual privacy would not apply in the case of a directly observed collection, as discussed with respect to proposed § 26.115 [Collecting a urine specimen under direct observation].

Proposed § 26.107(a)(2) would be added to further emphasize the requirement in current Section 2.4(g)(8) in Appendix A to Part 26 that donors must be provided with individual privacy when providing a urine specimen. The proposed paragraph would require that, unless the specimen is to be collected under direct observation, no one other than the donor may go into the private area in which the donor will urinate. Although the NRC is not aware of any instances in Part 26 programs in which the current requirement for individual privacy has been compromised, the experience of other Federal agencies has indicated that such emphasis is necessary.

Proposed § 26.107(a)(3) would permit the collector to set a reasonable time limit for the donor to urinate. Rather than establishing a specific time limit, the proposed rule would permit the collector to rely on his or her professional judgment in order to ensure that individuals who may experience difficulty in voiding have sufficient time to provide a specimen, while also

permitting collectors to prevent donors from disrupting the testing process by taking an unduly long time to provide a specimen. Proposed training and qualification requirements to ensure that collectors are able to exercise professional judgment appropriately would be specified in proposed § 26.85 (a). At the public meetings discussed in Section V, stakeholders reported incidents in which donors appeared to be attempting to disrupt the testing process by spending an unduly long time providing a specimen and challenged the collector's authority to set a time limit. The proposed paragraph would clarify that collectors have the authority to set a reasonable time limit for voiding. In addition, the proposed paragraph would increase the consistency of Part 26 with the procedures implemented by other Federal agencies, consistent with Goal 1 of this rulemaking.

Proposed § 26.107(b) would amend current Section 2.4(g)(9) in Appendix A to Part 26, which requires the collector to note any unusual behavior or appearance in the permanent record book and on the custody-and-control form. The proposed paragraph would clarify the intent of the current requirement, which has raised implementation questions from licensees, by specifying that the collector must pay careful attention to the donor during the collection process for the purpose of noting any conduct that may indicate an attempt to tamper with the specimen. The proposed paragraph would also provide examples of the types of behavior that may indicate a subversion attempt and require the collector to contact FFD program management if such behavior is observed. The proposed rule would require FFD program management to determine whether a directly observed collection is necessary under proposed § 26.115 [Collecting a urine specimen under direct observation].

Proposed § 26.107(c) would be added to specify the actions to be taken by the collector and donor to complete the specimen collection procedure. The first sentence of proposed § 26.107(c) would retain the existing instruction in current Section 2.4(g)(12) in Appendix A to Part 26, which prohibits the donor from washing his or her hands until the specimen has been delivered to the collector. The proposed paragraph would also add a requirement for the collector to inspect the private area for any evidence of a subversion attempt prior to flushing the toilet. This proposed additional requirement would be consistent with existing industry practices and the procedures of other Federal agencies. In addition, it may increase the likelihood of detecting subversion attempts from which physical evidence may remain in the toilet bowl or private area where the donor voided, which could include, but would not be limited to, an empty vial that contains an adulterant, powdered urine spilled on the floor, or the remains of an adulterant in the toilet bowel.

Section 26.109 Urine Specimen Quantity

A new § 26.109 [Urine specimen quantity] would amend current Section 2.4(g)(11) in Appendix A to Part 26, which establishes 60 milliliters (mL) as the minimum quantity of urine that an FFD program must collect from donors and the procedures to be followed if a donor is unable to provide the specified quantity.

Proposed § 26.109(a) would introduce a new term, ''the predetermined quantity.'' The predetermined quantity of urine that a donor would be requested to provide would be established by the licensee or other entity, depending upon the characteristics of the licensee's or other entity's testing program. The proposed rule would require the predetermined quantity to include at least 30 milliliters (mL) of urine, but licensees and other entities could request a larger quantity of urine, if the specimen will be initially tested at a licensee testing facility, if testing will be conducted for additional drugs beyond those required in proposed § 26.31(d)(1), if split specimen procedures will be followed, and if the licensee's or other entity's program includes some combination of these characteristics.

The proposed paragraph would establish 30 mL as the basic quantity of urine that donors must provide for a testing program that does not include initial tests at a licensee testing facility, does not test for additional drugs, and does not follow split specimen procedures. The 60 mL quantity that is required in current Section 2.4(g)(11) in Appendix A to Part 26 would be reduced to 30 mL to decrease the burden on donors, while ensuring that a sufficient quantity of urine is available to complete initial validity and drug tests, confirmatory validity and drug tests (if required), and any retests that may be requested by the donor and authorized by the MRO under proposed § 26.165(b). NRC staff discussions with representatives of HHS-certified laboratories indicated that advances in testing technologies allow for these minimum testing and retesting procedures to be completed on a 30 mL specimen. Therefore, a 60 mL specimen would no longer be necessary to achieve the NRC's minimum objectives of conducting validity and drug tests on each specimen for the five classes of drugs specified in proposed § 26.31(d)(1), as well as retesting of the specimen, if required.

Proposed § 26.109(a) would also specify the additional quantity of urine, above the basic 30 mL, to be collected when the testing program follows split specimen procedures. Licensees and other entities would be required to collect an additional 15 mL for transfer into Bottle B of a split specimen for storage and possible testing. (As discussed with respect to proposed § 26.113(b), the proposed rule would replace the terms, ''primary specimen'' and ''split specimen,'' in the current rule with the terms, ''Bottle A'' and ''Bottle B,'' for clarity in the language of the rule and consistency with the terminology used by other Federal agencies.) This additional 15 mL would be sufficient to permit the HHS-certified laboratory to conduct validity and drug tests of the specimen in Bottle B, at the donor's request, and is consistent with the quantity required in the related provisions of other Federal agencies. Therefore, if a licensee's or other entity's testing program follows split specimen procedures, but does not include initial tests at the licensee testing facility or testing for additional drugs beyond those specified in proposed § 26.31(d)(1), then the predetermined quantity for this testing program would be 45 mL (30 mL for basic testing + 15 mL for the split specimen). The predetermined quantity would be larger than 45 mL if the testing program also includes initial tests at a licensee testing facility and testing for additional drugs.

Proposed § 26.109(a) would also permit licensees and other entities to include in the predetermined quantity the additional amount of urine that would be necessary to support testing for additional drugs beyond those specified in proposed § 26.31(d)(1). Licensees and other entities would consult with the HHS-certified laboratories they use to identify the quantity of urine required to test for the additional drugs. For example, if the licensee's or other entity's testing program does not include initial tests at a licensee testing facility and does not follow split specimen procedures, then the predetermined quantity for that testing program would consist of the 30 mL basic quantity plus the additional amount of urine needed to test for additional drugs. As another example, if a licensee's or other entity's testing program includes initial tests at a

licensee testing facility, follows split specimen procedures, and tests for additional drugs, then the predetermined quantity would consist of the 30 mL basic quantity plus 15 mL for the split specimen plus the additional amount required to test for additional drugs.

Proposed § 26.109(a) would also permit licensees and other entities to include in the predetermined quantity the additional amount of urine that is necessary to perform initial validity and drug tests at the licensee testing facility, if initial tests are performed at the licensee testing facility. For example, one licensee testing program currently requires an additional 10 mL of urine for initial testing at the licensee testing facility, but does not test for additional drugs or follow split specimen procedures. In this program, the predetermined quantity that collectors would request the donor to provide is 40 mL. As another example, if a licensee's or other entity's testing program includes initial tests at the licensee testing facility, does not test for additional drugs, and follows split specimen procedures, the predetermined quantity could be 55 mL (30 mL for basic testing + 15 mL for the split specimen + 10 mL for initial testing at the licensee testing facility). If this program also tests for additional drugs, the predetermined quantity could be larger than 55 mL.

Proposed § 26.109(b) would be added to establish the actions that the collector must take if a donor provides a specimen that is less than the 30 mL basic quantity. NRC staff discussions with representatives of HHS-certified laboratories indicated that 30 mL is sufficient to meet the NRC's primary objectives of detecting drug use and subversion attempts through initial validity and drug testing, and for confirmatory validity and drug tests, if required, at an HHS-certified laboratory for the panel of drugs for which testing is required in proposed § 26.31(d)(1). The 30 mL quantity would also ensure that sufficient urine is available for retesting the specimen for validity and for drugs and drug metabolites, should the donor request such retesting, as permitted in proposed § 26.165(b). However, the 30 mL basic quantity would be insufficient to permit testing for additional drugs, initial testing at licensee testing facilities, or splitting the specimen, which are not required under this part.

Proposed § 26.109(b)(1) would amend the portions of current Section 2.4(g)(11) in Appendix A to Part 26 that relate to collector actions if a donor provides an insufficient specimen. The proposed paragraph would require the collector to ''encourage'' the donor to drink a reasonable amount of liquid in order to provide a specimen of at least 30 mL, rather than ''allow'' the donor to drink additional liquid as currently required. This proposed change would be made to enhance the efficiency of FFD programs, consistent with Goal 3 of this rulemaking, by potentially reducing the time required to obtain a specimen of the required quantity from the donor and, thereby, to complete the collection, should the donor choose to comply. However, the proposed paragraph would establish a limit on the amount of liquid that the individual would be permitted to consume to avoid the potential for ''water intoxication,'' which is a physical response to consuming too many liquids that may cause harm to the donor. The proposed limit of 24 ounces of water over a 3-hour period would be the same limit imposed in the HHS Guidelines, and would be conservative, in order to ensure that individuals who may have a medical condition that makes them more subject to water intoxication, such as some forms of renal disease or taking some medications, would not be placed at-risk. The proposed rule would retain the current requirement in Section 2.4(g)(11) in Appendix A to Part 26 to collect successive specimens in separate containers.

Proposed § 26.109(b)(2) would be added to require the collector to end the specimen collection process as soon as the donor provides a specimen of at least 30 mL in a subsequent attempt. This proposed requirement would reduce the burden on donors who may have some difficulty providing a urine specimen, while meeting the NRC's objectives of obtaining a specimen of sufficient size to support initial and confirmatory validity and drug testing, as well as retesting of the specimen.

Proposed § 26.109(b)(2) would also specify that the licensee or other entity may not impose any sanctions if a donor provides a subsequent specimen that is less than the licensee's or other entity's predetermined quantity, as long as the specimen quantity is at least 30 mL. Sanctions for failing to provide sufficient urine to support initial testing at the licensee's testing facility, split specimen procedures, or testing for additional drugs would be inappropriate, because a specimen of at least 30 mL is sufficient to meet the NRC's objectives and, therefore, could not be considered a refusal to test.

Proposed § 26.109(b)(2) would also require the collector to forward a subsequent specimen that is greater than 30 mL, but less than the licensee's or other entity's predetermined quantity, to the HHS-certified laboratory for testing, rather than permit the specimen to be tested at the licensee testing facility. This proposed provision is necessary to ensure that a sufficient quantity of urine is available for validity and drug testing and retesting at the HHS-certified laboratory, if required, consistent with the NRC's objectives. If the subsequent specimen is equal to or greater than the licensee's or other entity's predetermined quantity, however, the licensee or other entity would be permitted to follow the FFD program's normal testing procedures. Following normal testing procedures in this instance would be permissible because there would be sufficient urine to implement the FFD program's testing procedures (*e.g.*, split specimen procedures, testing for additional drugs, initial testing at a licensee testing facility), while continuing to ensure that sufficient urine is available for testing and retesting at the HHS-certified laboratory, if required.

Proposed § 26.109(b)(3) would be added to require the implementation of ''shy bladder'' procedures if a donor is unable to provide a 30 mL specimen within 3 hours of the initial attempt to provide a specimen, for the reasons discussed with respect to proposed § 26.119 [Determining shy bladder]. Requirements for implementing ''shy bladder'' procedures would be contained in that proposed section.

Proposed § 26.109(b)(4) would be added to establish additional requirements for specimen collections when a donor provides a specimen of less than 30 mL, as follows:

The proposed paragraph would eliminate the requirement in current Section 2.4(g)(11) in Appendix A to Part 26 to combine successive specimens from a donor in order to obtain a specimen of 60 mL. The proposed rule would prohibit the practice of combining specimens to ensure that successive specimens neither contaminate nor dilute a specimen that will be tested. In addition, the proposed prohibition would increase the consistency of Part 26 with the related requirements of other Federal agencies, which is Goal 1 of this rulemaking.

Proposed § 26.109(b)(4) would also require the collector to discard any specimens of less than 30 mL unless there is reason to believe that a specimen may have been altered. Examples of reasons to believe that a donor may have attempted to alter the specimen could include, but would not be limited to: (1) Observation of powder (that could be an adulterant or powdered urine) spilled in the private

area in which the donor urinated or on the donor's clothing; (2) unexpected sounds from the private area while the donor should be urinating, such as the sound of something being unwrapped or dropping to the floor; (3) observation that the donor's pocket appears to contain an item that was not visible before the donor entered the private area (that the donor may have previously had taped to his body); and (4) an unusual color or lack of clarity in the urine specimen. The proposed rule would require the collector to discard specimens of less than 30 mL when there is no reason to believe that the specimens had been subject to tampering because they would not be used for testing and there would be no reason to retain them.

If the collector suspects that a specimen has been altered and the suspect specimen is greater than 15 mL, the proposed rule would require the collector to forward the suspect specimen to the HHS-certified laboratory for testing, consistent with current Section 2.4(g)(16) in Appendix A to Part 26. NRC staff discussions with representatives of HHS-certified laboratories indicate that 15 mL is the minimum quantity necessary for HHS-certified laboratories to perform the initial and confirmatory (if necessary) validity and drug testing required in this part, although it would be insufficient to support retesting of the specimen at the donor's request. In these circumstances, in which the collector has observed donor conduct or specimen characteristics that indicate there is a reason to believe that the donor may have altered the specimen, the NRC's interest in assuring that the testing process is not subverted would take precedence over the individual's ability to request retesting of the specimen. Any results of validity testing that confirm that the specimen was adulterated or substituted, in combination with the collector's observations, would provide clear evidence that a donor had tampered with the specimen and had thereby attempted to subvert the testing process.

The proposed paragraph would also amend current Section 2.4(g)(17) in Appendix A to Part 26, which requires a directly observed collection whenever there is a reason to believe that a donor has or may attempt to alter a specimen. The proposed paragraph would require the collector to contact FFD program management to determine whether a directly observed collection is required, but would not require a directly observed collection. At the public meetings discussed in Section V, the stakeholders requested flexibility in the decision to collect another specimen under direct observation. They noted that there have been numerous instances in which a collector identified incontrovertible evidence that the donor intended to or had tampered with a specimen and that, in such cases, drug testing would not provide additional information that justifies the costs associated with conducting a directly observed collection and testing the additional specimen. The NRC believes that the presence of drugs and drug metabolites in a specimen that is collected under direct observation would establish a clear motive for an alleged attempt to tamper with a specimen and would add further evidence supporting the imposition of sanctions on the donor for attempting to subvert the testing process. However, the NRC agrees with the stakeholders that such additional evidence is unnecessary when there is incontrovertible evidence that the donor intends to or has attempted to tamper with a specimen. Therefore, the proposed rule would permit FFD program management to determine whether an additional specimen collection under direct observation would be conducted. This proposed change would be made to meet Goal 3 of this rulemaking, which is to improve the efficiency of FFD programs, by reducing the number of directly observed collections required under the rule.

Section 26.111 Checking the Validity of the Urine Specimen

A new § 26.111 [Checking the validity of the urine specimen] would amend current requirements for assessing specimen validity at the collection site, which appear in Section 2.4(g)(13)–(g)(17) in Appendix A to Part 26. In general, the changes contained in the proposed section would be made to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.111(a) would amend current Section 2.4(g)(13) in Appendix A to Part 26, which requires the collector to measure the temperature of the specimen immediately after the urine specimen is collected. The proposed paragraph would require the collector to measure the temperature of any specimen that is 15 mL or more. The proposed rule would not require measuring the temperature of smaller specimens because the collector would be required to discard them, as discussed with respect to proposed § 109(b)(4). The proposed paragraph would also amend the third sentence of current Section 2.4(g)(13) to indicate that, if the ambient temperature is low or the specimen is small, it may be necessary to measure the specimen temperature sooner than 4 minutes after the collector receives the specimen from the donor. A low ambient temperature could cool the specimen more rapidly than normal room temperatures, resulting in an inaccurate temperature reading. Specimens of less than 30 mL will cool more rapidly than specimens of 30 mL or more, so that smaller specimens may also produce inaccurate temperature readings. Therefore, the proposed rule would add an admonition for the collector to expedite the temperature measurement process if the collection is occurring in an environment below normal room temperatures or the specimen is small.

Proposed § 26.111(b) would replace current Section 2.4(g)(14) in Appendix A to Part 26, which establishes the acceptable specimen temperature range and requires conducting a second specimen collection under direct observation if a specimen's temperature falls outside the acceptable range. The proposed rule would increase the range of acceptable specimen temperatures from 90.5°F–99.8°F in the current provision to 90°F–100°F for consistency with the temperature range specified in the HHS Guidelines. The proposed wider acceptable temperature range would provide increased protection against false low or false high temperature readings and, therefore, would protect donors from the imposition of sanctions based upon inaccurate specimen temperature readings. The proposed paragraph would retain the requirement in the current rule for the collector to offer the donor the opportunity to provide a measurement of body temperature, but a measure of oral temperature would no longer be specified. New technologies for obtaining body temperature, such as digital measurement in the ear canal, would also be permitted, because the new technologies provide results more quickly that are at least as accurate as oral thermometers. The portion of current Section 2.4(g)(14) that specifies collector actions if there is a reason to believe that the individual may have tampered with the specimen would be moved to proposed § 26.111(d) for organizational clarity.

Proposed § 26.111(c) would amend current Section 2.4(g)(15) in Appendix A to Part 26, which requires the collector to inspect the specimen's color, determine whether there are any signs of contaminants, and record any unusual findings in the permanent

record book. The proposed rule would amend this requirement by deleting reference to the permanent record book and requiring the collector to use the custody-and-control form for recording this information. This change would be made because the proposed rule would no longer require collection sites to maintain a permanent record book, consistent with the elimination of the requirement to maintain a permanent record book in the HHS Guidelines. The proposed rule would also make minor editorial revisions to the current provision by incorporating the related language from the HHS Guidelines. These proposed changes would be made to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with the regulations of other Federal agencies.

Proposed § 26.111(d) would replace and revise the first sentence of current Section 2.4(g)(14) in Appendix A to Part 26, which requires a second specimen to be collected under direct observation if the temperature of the first specimen submitted by a donor falls outside of the acceptable specimen temperature range. The proposed paragraph would eliminate the requirement for a second specimen collection under direct observation if the specimen temperature falls outside of the required range, although licensees and other entities could, at their discretion, continue this practice. Instead, the proposed provision would require the collector to contact the FFD program manager, if the collector has a reason to believe the donor has attempted to subvert the testing process based upon observed donor behavior, the specimen temperature, unusual specimen characteristics, or other observations. The FFD program manager, at his or her discretion, would consult with the MRO to determine whether the collector's observations provide sufficient evidence that a subversion attempt has occurred to warrant the imposition of sanctions. If the MRO and/or FFD program manager determine that a subversion attempt has occurred on the basis of the collector's observations, the licensee or other entity would be permitted to impose the sanctions for a subversion attempt in proposed § 26.75(b) without conducting a directly observed collection. However, at the FFD program manager's or the MRO's discretion, a second specimen may be collected under direct observation. The proposed rule would permit the second specimen to be collected under direct observation to provide further information to assist the MRO in determining whether or not a subversion attempt has occurred. For example, positive drug test results from a second specimen that was collected under direct observation would provide additional evidence that the donor had attempted to tamper with his or her first specimen to hide drug use. This proposed change would be made in response to stakeholder requests, for the reasons discussed with respect to proposed § 26.109(b)(4).

Proposed § 26.111(e) would revise current Section 2.4(g)(16) in Appendix A to Part 26, which requires that all urine specimens that are suspected of being adulterated or diluted must be forwarded to the HHS-certified laboratory for testing. The proposed paragraph would add suspicion that a specimen has been substituted as a third reason for forwarding the specimen to the HHS-certified laboratory. As discussed with respect to proposed § 26.31(d)(3)(i), substitution entails replacing a valid urine specimen with a drug-free specimen. This proposed addition would be made for consistency with the addition of substitution to the proposed rule as another method of attempting to subvert the testing process for which licensees and other entities would be required to impose sanctions, as discussed with respect to proposed § 26.75(b).

The proposed paragraph would also specifically prohibit testing the suspect specimen at a licensee testing facility for three reasons, which are to: (1) Limit the potential for specimen degradation during the time period required to conduct testing at the licensee testing facility; (2) decrease the time required to obtain confirmatory validity test results if the specimen, in fact, has been altered; and (3) ensure that a sufficient quantity of urine is available for conducting validity tests at more than one HHS-certified laboratory if, for example, the specimen contains a new adulterant or an adulterant that the licensee's or other entity's primary laboratory is not capable of identifying [see proposed § 26.161(g)]. Only suspect specimens of 15 mL or more would be sent for testing, rather than all specimens. This proposed lower limit on specimen quantity would be added in order to ensure that there would be sufficient urine available for the HHS-certified laboratory to conduct all of the validity and drug tests on the specimen that would required under this part.

Proposed § 26.111(f) would require collectors and the HHS-certified laboratory to preserve as much of the specimen as possible. This proposed requirement would be added to provide increased assurance that a sufficient quantity of urine would be available to support further testing, in the event that further testing of the specimen is necessary, and to enhance the consistency of Part 26 with the related provisions of other Federal agencies.

Proposed § 26.111(g) would be added to inform donors and collectors of the characteristics of a specimen that is acceptable for testing at an HHS-certified laboratory. The proposed paragraph would incorporate the related provision from the HHS Guidelines.

Section 26.113 Splitting the Urine Specimen

Proposed § 26.113 [Splitting the urine specimen] would update the requirements in current Sections 2.4(g)(20) and 2.7(j) in Appendix A to Part 26, which address collection site procedures for split specimens, and group them together in one section within the proposed rule for organizational clarity.

Proposed § 26.113(a) would retain the first sentence of current Section 2.7(j) in Appendix A to Part 26, which permits licensees to follow split specimen procedures. The proposed rule would revise the current sentence in the active voice for increased clarity in the language of the rule.

Proposed § 26.113(b) would be added to group together in one paragraph, for organizational clarity, the steps that the collector and donor must follow for the split-specimen collection procedure, which are embedded in current Section 2.4(g)(20) and portions of Section 2.7(j) in Appendix A to Part 26. The proposed rule would also replace the terminology used in the current rule that refers to the split specimen as an ''aliquot,'' and use the terms, ''Bottle A'' and ''Bottle B,'' to refer to the primary and split specimen, respectively. This proposed change would be made for increased clarity in the language of the rule and consistency with the terminology used in other relevant Federal rules and guidelines.

Proposed § 26.113(b)(1) would require the collector to instruct the donor to urinate into either a specimen bottle or a specimen container. This step would be added to clarify that the donor is not required to divide a specimen into Bottle A and Bottle B while urinating. The proposed paragraph would incorporate the related provision in the HHS Guidelines.

Proposed § 26.113(b)(2) would amend the portions of current Section 2.7(j) in Appendix A to Part 26 that specify the amount of urine to be contained in the split specimen bottles. The proposed rule would replace the implied requirements in the second and third sentences of Section 2.4(j), which refer to the split specimens as ''halves'' of the specimen that was collected, with

updated requirements that would be consistent with those established in proposed § 26.109 [Urine specimen quantity] and the related provisions in the HHS Guidelines. The proposed paragraph would require the collector to ensure that Bottle A contains 30 mL of urine and that Bottle B contains 15 mL. As discussed with respect to proposed § 26.109, advances in urine testing technologies since Part 26 was first promulgated permit a reduction in the quantities of urine that must be collected from donors in order to conduct the testing that would be required under this part. Therefore, 30 mL of urine is now a sufficient quantity for conducting all of the testing that may be required under this part, while 15 mL is sufficient for any retesting that a donor may request.

The proposed paragraph would also specify that the specimen in Bottle A would be used for drug and validity testing and that, even if there is less than 15 mL of urine available for Bottle B after the collector ensures that Bottle A contains 30 mL, the specimen in Bottle A must be subject to testing anyway. These clarifications would be added to the proposed rule because, in the experience of other Federal agencies, some collection sites have discarded any specimen of less than 45 mL and conducted another collection to obtain a sufficient amount of urine to fill both Bottles A and B. Should any Part 26 programs follow this practice, the efficiency of FFD programs would be reduced and the burden on donors from being subject to testing would be unnecessarily increased. The 30 mL quantity is sufficient to permit retesting of the specimen in Bottle A, at the donor's discretion, and, therefore, having 15 mL of urine available for Bottle B is unnecessary to ensure donors' rights to retesting. The proposed rule would incorporate these clarifications from the HHS Guidelines to ensure that Part 26 programs do not adopt this inefficient and burdensome practice.

Proposed § 26.113(b)(3) would retain the portion of current Section 2.4(g)(20) in Appendix A to Part 26 that requires the donor to observe the process of splitting the specimens and maintain visual contact with the specimen bottles until they are sealed and prepared for storage or shipping.

Proposed § 26.113(c) would be added to establish priorities for using the specimen that has been collected. The proposed paragraph would permit the licensee testing facility to test aliquots of the specimen at a licensee testing facility or to test for additional drugs beyond those required under proposed § 26.31(d)(1), but only if the donor has provided a specimen of at least the predetermined quantity, as discussed with respect to proposed § 26.109 [Urine specimen quantity]. As discussed with respect to proposed § 26.113(b)(2), the proposed rule would require the collector first to ensure that 30 mL of urine is available for Bottle A and 15 mL for Bottle B. If the donor has provided more than 45 mL of urine and the additional amount is sufficient to support testing at the licensee testing facility, testing for additional drugs, or both, the proposed rule would permit the remaining amount of urine, above the 45 mL required for Bottles A and B, to be subject to such testing. However, if the donor has provided only 45 mL of urine, the proposed rule would require that the 15 mL of urine that remains after 30 mL has been retained for Bottle A must be used for Bottle B rather than to conduct testing at the licensee testing facility or testing for additional drugs. The proposed rule would establish the priority of using the 15 mL of urine for Bottle B, rather than for testing at a licensee testing facility or additional drugs, because the FFD program has established the expectation among donors in this instance that the FFD program will follow split specimen procedures and that Bottle B will be available for retesting at the donor's request. Reserving the 15 mL of urine for Bottle B would also be consistent with the principle that would be established in the last sentences of proposed §§ 26.135(b) and 26.165(a)(4) that control over testing of the specimen contained in Bottle B would reside with the donor.

Section 26.115 Collecting a Urine Specimen Under Direct Observation

Proposed § 26.115 [Collecting a urine specimen under direct observation] would group together in one section the requirements of the proposed rule that apply to collecting a urine specimen under direct observation. This organizational change would be made because requirements that address this topic are dispersed throughout the current rule. The proposed section would also incorporate more detailed procedures for collecting specimens under direct observation, based upon related requirements from other relevant Federal rules and guidelines. More detailed procedures are necessary because devices and techniques to subvert the testing process have been developed since Part 26 was first published that are difficult to detect in many collection circumstances, including under direct observation, such as a false penis or other realistic urine delivery device containing a substitute urine specimen and heating element that may be used to replicate urination. Therefore, the proposed changes would be made to increase the likelihood of detecting such attempts to subvert the testing process and, thereby, increase the effectiveness of directly observed collections in assuring that a valid specimen is obtained from the donor.

Proposed § 26.115(a) would amend and combine current Section 2.4(f), 2.4(g)(17), and (g)(25) in Appendix A to Part 26, which establish requirements for collecting a urine specimen under direct observation. The proposed paragraph would assign responsibility for approving a directly observed collection to the MRO or FFD program manager, rather than a ''higher level supervisor'' of the collector in current Section 2.4(b)(25) in Appendix A to Part 26. This proposed change would ensure that the decision to conduct a directly observed collection is made by an individual who is thoroughly knowledgeable of the requirements of this part and the emphasis that the NRC places on maintaining the individual privacy of donors. The proposed change would also be consistent with revised requirements in the HHS Guidelines related to who may authorize a directly observed collection.

The proposed rule would also list the circumstances that constitute a reason to believe that a donor may dilute, substitute, adulterate, or otherwise alter a specimen, and that would, therefore, warrant the invasion of individual privacy associated with a directly observed collection, as follows:

Proposed § 26.115(a)(1) would amend current Section 2.4(f)(2) in Appendix A to Part 26, which specifies that a directly observed collection may be performed if the last urine specimen provided by donor yielded specific gravity and creatinine concentration results that are inconsistent with normal human urine. The proposed paragraph would amend the current provision in several ways.

First, the proposed rule would eliminate the limitation in the current paragraph that a specimen may be collected under direct observation if ''the last urine specimen'' provided by the individual yielded specific gravity and creatinine concentration results that are inconsistent with normal human urine. The proposed rule would permit a directly observed collection if the donor had presented a specimen with characteristics that are inconsistent with normal human urine ''at this or a previous collection.'' The proposed change would be necessary for

consistency with proposed § 26.75(b), which would require that an individual who has subverted or attempted to subvert any test conducted under Part 26 must be subject to a permanent denial of authorization. Because proposed § 26.75(b) would require permanent denial of authorization to a donor who has engaged in a subversion attempt, individuals whose last specimen had characteristics that are inconsistent with normal human urine would not be subject to further testing under the rule. However, there may be instances in which a licensee or other entity is aware that an individual has engaged in a subversion attempt under a drug testing program that is not regulated by the NRC. If the licensee or other entity is considering granting authorization under Part 26 to the individual, then a directly observed collection would be warranted to ensure that the donor did not have an opportunity to tamper with the specimen and, therefore, that drug test results would be accurate. The amended language of the proposed provision would permit collecting a specimen under direct observation in such circumstances.

Second, the proposed rule would update the current provision by replacing the specific gravity and creatinine concentration values that are included in the current paragraph with references to a urine specimen that ''the HHS-certified laboratory reported as being substituted, adulterated, or invalid to the MRO and the MRO reported to the licensee or other entity that there is no adequate medical explanation for the result.'' This proposed change would be made for consistency with the addition of more detailed requirements for validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The cutoff concentrations and specimen characteristics that would lead the HHS-laboratory to report a specimen as substituted, adulterated, or invalid would be specified in proposed § 26.161 [Cutoff levels for validity testing]. Requirements for the MRO's review of the test results would be specified in proposed § 26.185 [Determining a fitness-for-duty policy violation].

Proposed § 26.115(a)(2) would combine and update current Sections 2.4(f)(1) and 2.4(g)(14) in Appendix A to Part 26, which establish that the presentation of a specimen that falls outside of the required temperature range is sufficient grounds to conduct a directly observed collection. The proposed paragraph would retain the requirement in current Section 2.4 (f)(1) in Appendix A to Part 26, which specifies that a directly observed collection may be conducted at any time the specimen's temperature falls outside of the required temperature range. However, the proposed paragraph would amend the current requirement for the collector to take an oral measure of temperature with a sterile thermometer to permit other means of measuring the donor's body temperature, for the reasons discussed with respect to proposed § 26.111(a). The proposed rule would also retain the current requirement that a directly observed collection may be conducted if the specimen's temperature falls outside of the required range and the donor declines to provide a measurement of body temperature, in proposed § 26.115(a)(2)(i). However, proposed § 26.115(a)(2)(ii) would eliminate the current permission to conduct a directly observed collection in those instances in which the donor's body temperature does not equal or exceed that of the specimen. The proposed rule would establish a range of acceptable variability between the donor's measured temperature and the specimen's temperature of 1EC/1.8EF. If the donor's temperature differs from the specified temperature by more than the specified amount, a directly observed collection would be permitted. This proposed change would be made for consistency with the related provision in the HHS Guidelines and to recognize that a specimen temperature that is either much higher or lower than the donor's body temperature may indicate that the donor has attempted to subvert the testing process.

Proposed § 26.115(a)(3) would update current Section 2.4(f)(3) in Appendix A to Part 26, which permits a directly observed collection if a collector observes donor conduct that clearly and unequivocally demonstrates an attempt by the donor to substitute the specimen. The proposed rule would add references to attempts to dilute and adulterate a specimen, in addition to substitution, as behaviors that demonstrate a subversion attempt, consistent with the NRC's heightened concern for ensuring specimen validity in the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). As discussed with respect to proposed § 26.107(b), donor conduct that clearly and unequivocally demonstrates an attempt to alter a specimen may include, but is not limited to, possession of a urine specimen before the collection has occurred; possession of a vial, or vials, filled with chemicals that are subsequently determined to be urine or an adulterant; possession of a heating element; or evidence that the coloring agent used by the licensee or other entity in a source of standing water at the collection site [see proposed § 26.87(e)(1)] discolors the specimen.

Proposed § 26.115(a)(4) would update current Section 2.4(f)(4) in Appendix A to Part 26, which permits directly observed collections if a donor has previously been determined to have engaged in substance abuse and the specimen is being collected as part of a rehabilitation program and/or pre-access testing following a confirmed positive test result. The proposed paragraph would update the current requirement by adding a cross-reference to proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information], which would establish requirements for granting or maintaining the authorization of an individual about whom potentially disqualifying FFD information has been discovered or disclosed. Several provisions in proposed § 26.69 would permit or require directly observed collections, including proposed § 26.69(b)(5), which would require specimens to be collected under direct observation for pre-access drug testing of individuals who have been subject to sanctions under the rule. For organizational clarity, the proposed paragraph would replace the current requirement with a cross-reference to proposed § 26.69, rather than repeat the applicable requirements in this section.

Proposed § 26.115(b) would amend the requirement in current Section 2.4(g)(25) in Appendix A to Part 26 that the collector must obtain permission from a ''higher level supervisor'' before conducting a directly observed collection, as discussed with respect to proposed § 26.115(a). The second sentence of the proposed paragraph would be added to require that, once the decision has been made to conduct a directly observed collection based on a reason to believe that the donor may alter a specimen, the collection must occur as soon as reasonably practical. Although the NRC is not aware of any occasions in Part 26 programs in which a directly observed collection has been unreasonably delayed, the proposed requirement would ensure that test results from the directly observed collection provide information about the presence or absence of drugs and drug metabolites in the donor's urine. If a collection is delayed for a day or more, metabolism may cause the concentration of drugs and drug metabolites in the donor's urine, if any are present, to fall below the cutoff levels established in this part or by the

FFD program and, therefore, not be detected by testing. Non-negative test results from testing a specimen collected under direct observation would provide evidence to support a conclusion that the individual had attempted to subvert the testing process in order to mask drug abuse, whereas negative test results may counter the reason to believe that the individual had attempted to subvert the testing process. Therefore, conducting the directly observed collection as soon as reasonably practical would ensure that test results from the specimen provide relevant and useful information. The proposed requirement would also be consistent with the requirements of other relevant Federal rules and guidelines.

Proposed § 26.115(c) would be added to require the collector to inform the donor of the reason(s) for the directly observed collection so that the donor is aware of the nature of the concern that has initiated a directly observed collection. This proposed requirement would be added to the proposed rule for two reasons: (1) Knowing the reason for a directly observed collection may increase a donor's willingness to cooperate in the procedure in order to counter the reason to believe that the donor has or may attempt to alter the specimen, and (2) informing the donor of the reason for a directly observed collection would meet Goal 7 of this rulemaking, which is to protect donors' right to due process, by ensuring that the donor is aware of the concern that has initiated the collection. The proposed paragraph would also be consistent with the requirements of other relevant Federal rules and guidelines.

Proposed § 26.115(d) would be added to establish recordkeeping requirements related to the directly observed collection. The proposed paragraph would require the collector to record on the specimen's custody-and-control form that the specimen was collected under direct observation and the reason for the directly observed collection. The proposed requirement is necessary to ensure that the HHS-certified laboratory and the MRO have this information available when the specimen is tested and the MRO conducts his or her review of the test results, as would be required under proposed § 26.185 [Determining a fitness-for-duty policy violation]. This information would be important, for example, in an MRO's decision to request the laboratory to test a specimen at the LOD that appeared to have been diluted, as permitted under proposed § 26.185(g)(2), in order to compare the results from testing the dilute specimen with those obtained from testing the specimen that was collected under direct observation. Non-negative test results from the dilute specimen and the presence of the same drugs or drug metabolites in the specimen collected under direct observation would provide clear evidence that the donor had diluted the first specimen in an attempt to mask drug use. The proposed paragraph would also be consistent with the requirements of other relevant Federal rules and guidelines.

Proposed § 26.115(e) would retain and combine the existing requirements in Sections 1.2, 2.4(b), 2.4(g)(14), (g)(17), and (g)(25) in Appendix A to Part 26, which require that the individual who observes the specimen collection must be of the same gender as the donor. Consistent with the current requirements, the proposed rule would permit another individual of the same gender to serve as the observer if a qualified urine collector of the same gender is not available, as long as the observer receives the instructions specified in proposed § 26.115(f). The proposed rule would combine the current requirements in the proposed paragraph for organizational clarity.

Proposed § 26.115(f) would be added to specify the procedures that must be followed in conducting a directly observed collection. The procedures in the proposed paragraph would be followed by either a qualified collector or an individual of the same gender who may serve as the observer. These more detailed procedures are necessary because devices and techniques to subvert the testing process have been developed since Part 26 was first published that can be used under direct observation without detection. Therefore, the proposed changes would be made to increase the likelihood of detecting such attempts to subvert the testing process and, thereby, increase the effectiveness of directly observed collections in assuring that a valid specimen is obtained from the donor.

Proposed § 26.115(f)(1) would be added to specify that the observer must instruct the donor to adjust his or her clothing to ensure that the area of the donor's body between the waist and knees is exposed. This proposed requirement would be added to ensure that the observer could detect the use of an anatomically correct urine delivery device.

Proposed § 26.115(f)(2) would be added to specify the action to be observed during the collection. This proposed requirement would be consistent with the requirements of other Federal agencies and is intended to ensure that the urine specimen is obtained from the donor's body.

Proposed § 26.115(f)(3) would be added to prohibit an observer who is not the collector from touching the specimen container. The proposed provision would be consistent with the related requirements of other Federal agencies and is intended to protect the observer from any potential claims by a donor that the observer had altered the specimen.

Proposed § 26.115(f)(4) would be added to require the collector to record the observer's name on the custody-and-control form, if the observer is not the collector. The proposed requirement would be consistent with the related requirements of other Federal agencies and is intended to ensure that the observer's identity is documented, should future questions arise regarding the collection.

Proposed § 26.115(g) would be added to clarify that a donor's refusal to participate in the directly observed collection would constitute a refusal to test and, therefore, would be considered to be an act to subvert the testing process, under proposed § 26.75(b). Current Section 2.4(j) in Appendix A to Part 26 requires the collector to inform the MRO, and the MRO to inform licensee management, if a donor fails to cooperate with the specimen collection process, including, but not limited, to a refusal to provide a complete specimen, complete paperwork, or initial the specimen bottles. The current requirement does not specifically mention that a refusal to participate in a directly observed collection is also an instance of a failure to cooperate. In addition, the current rule does not require the licensee or other entity to impose sanctions on a donor for refusing to be tested. Therefore, the proposed paragraph would both clarify the NRC's original intent by stating that a refusal to participate in a directly observed collection constitutes a refusal to test and update the current requirement by adding a cross-reference to the proposed sanction of permanent denial of authorization that would be required in such circumstances under proposed § 26.75(b).

Proposed § 26.115(h) would be added to specify the actions that a collector must take, if a directly observed collection was required, but was not performed. The collector would inform the FFD program manager or designee of the omission, who would ensure that a directly observed collection is immediately performed. Although the concentrations of any drugs, drug metabolites, or blood alcohol in the donor's specimens may fall below the

cutoff levels that would be specified in this part or in the licensee's or other entity's FFD policy if several days have elapsed since the directly observed collection should have occurred, testing a specimen collected several days later would increase the likelihood of detecting any subsequent drug or alcohol use. In addition, the metabolites from using some drugs, such as marijuana, linger in an individual's body. Therefore, conducting a directly observed collection may result in detecting these metabolites. However, because elapsed time may reduce the concentrations of drugs, drug metabolites, or blood alcohol in the donor's specimens, the proposed rule would require a directly observed collection to be performed immediately. The proposed provision would use the term, ''immediately,'' to indicate that the licensee or other entity may be required to call in the donor and a collector to perform the directly observed collection, if the donor and collectors are not on site when the oversight is identified. This proposed requirement would increase consistency with the related requirements of other Federal agencies and is intended to provide instructions for correcting an oversight, which are not addressed in the current rule.

Section 26.117 Preparing Urine Specimens for Storage and Shipping

A new § 26.117 [Preparing urine specimens for storage and shipping] would reorganize and present together in one section current requirements for safeguarding specimens and preparing them for transfer from the collection site to the licensee's testing facility or the HHS-certified laboratory for testing. This organizational change would be made because requirements that address these topics are dispersed throughout the current rule whereas grouping them together in a single section would make them easier to locate within the proposed rule.

Proposed § 26.117(a) would amend current Section 2.4(g)(20) in Appendix A to Part 26, which requires the donor and collector to maintain visual contact with specimens until they are sealed and labeled. The proposed paragraph would eliminate reference to blood specimens because donors would no longer be permitted to volunteer to provide a blood specimen for alcohol testing under the proposed rule, as discussed with respect to proposed § 26.83(a). The proposed paragraph would also amend the requirements in the second sentence of the current provision. Procedural requirements for observing the splitting of a specimen and sealing the split specimen bottles would be moved to proposed § 26.113 [Splitting the urine specimen] for organizational clarity. However, the proposed paragraph would broaden the current requirement, which addresses only split specimens, to require the donor to observe the transfer of any specimen or aliquot that the collector transfers to a second container and the sealing of the container(s). This proposed requirement would be necessary because some FFD programs who operate licensee testing facilities may transfer an aliquot of the urine specimen to a second container for initial testing at the licensee testing facility, while preserving the primary specimen in the first or another container. The proposed rule would require the donor to observe these actions in order to ensure that the specimen or aliquot(s) that are transferred belong to the donor and that the identity and integrity of the specimen are maintained.

Proposed § 26.117(b) would retain current Section 2.4(g)(21) in Appendix A to Part 26, which requires the donor and collector to remain present while the procedures for sealing and preparing the specimen (and aliquots, if applicable) for transfer are performed.

Proposed § 26.117(c) would retain the meaning of current Section 2.4(g)(22) in Appendix A to Part 26, which establishes requirements for labeling and sealing the specimen(s), but split the current requirement into several sentences for increased clarity in the language of the provision.

For organizational clarity, proposed § 26.117(d) would combine current Section 2.4(g)(23) and 2.4(g)(23)(i) in Appendix A to Part 26, which require the donor to certify that the specimen was collected from him or her. However, the proposed rule would delete current Section 2.4(g)(23)(ii), which requires the donor to have an opportunity to list on the custody-and-control form any medications he or she has taken within the past 30 days, for the reasons discussed with respect to proposed § 26.89(b)(3).

The proposed rule would delete current Section 2.4(g)(24) in Appendix A to Part 26, which requires the collector to enter into the permanent record book all information identifying the specimen. This requirement would be eliminated because the proposed rule would no longer require collection sites to maintain a permanent record book, consistent with the elimination of the requirement to maintain a permanent record book in the HHS Guidelines. Collection sites would be permitted to use other means of tracking specimen identity, including, but not limited to bar coding.

Proposed § 26.117(e) would amend current Section 2.4(g)(26) in Appendix A to Part 26, which requires the collector to complete the chain-of-custody forms for both the aliquot and the split sample and certify proper completion of the collection. The proposed rule would eliminate reference to the aliquot and split sample in the current paragraph to clarify the intent of this requirement, which is that the collector must complete the appropriate chain-of-custody forms for all of the sealed specimen and aliquot containers, not simply those resulting from a split specimen procedure. For example, if an FFD program follows split specimen procedures and conducts initial testing at a licensee testing facility, the donor's urine specimen may be divided into Bottle A, Bottle B, and another container that would be used for tests at the licensee testing facility. The proposed paragraph would retain the current requirement for the collector to certify proper completion of the collection.

Proposed § 26.117(f) would amend current Section 2.4(g)(27) in Appendix A to Part 26, which states that the specimens and chain-of-custody forms are now ready for transfer and must be appropriately safeguarded if they are not immediately prepared for shipment. The proposed rule would replace the first sentence of the current provision, which states that the specimens and forms are ready for transfer, with a requirement for the collector to package the specimens and forms for transfer to the HHS-certified laboratory or licensee testing facility. This proposed change would improve the clarity in the rule's language, because it is necessary for the collector to package the specimens and chain-of-custody forms for transfer before they are ready to be transferred. The proposed paragraph would retain the second sentence of the current provision.

Proposed § 26.117(g) would retain current Section 2.4(g)(28) in Appendix A to Part 26, which requires the collector to maintain control of the specimens and custody documents and ensure they are secure, if he or she must leave the workstation or collection site for any reason. The proposed paragraph would make minor editorial changes to some of the terminology used in the current paragraph for consistency with the terminology used throughout the proposed rule, as discussed with respect to proposed § 26.5 [Definitions], but retain the intended meaning of the current requirements.

Proposed § 26.117(h) would retain the requirements in current Section 2.4(c)(2) in Appendix A to Part 26 related to maintaining specimen security until the specimens are sent to the licensee testing facility or the HHS-certified laboratory for testing from the collection site. The current paragraph would be moved to this section of the proposed rule for organizational clarity because this is the point in the specimen collection procedures at which requirements for maintaining specimen security would apply. The portion of the current paragraph that applies to situations in which it is impractical to maintain continuous physical security of a collection site would be moved to proposed § 26.87(f)(5) for organizational clarity because proposed § 26.87(f) addresses those circumstances.

Proposed § 26.117(i) would update the specimen packaging requirements in current Section 2.4(i) in Appendix A to Part 26 by replacing the current paragraph with the related provision from the HHS Guidelines. The first sentence of the current paragraph, which directs collection site personnel to arrange to transfer the specimens to the licensee testing facility or HHS-certified laboratory, would be moved to proposed § 26.117(j) for organizational clarity. Proposed § 26.117(j) would address transfer and storage requirements, while proposed § 26.117(i) would address packaging requirements. The proposed paragraph would also eliminate the initial phrases in the second sentence of the current paragraph, which list the conditions under which specimens will be transferred offsite (*e.g.*, shipping specimens that test as ''presumptive positive'' on initial testing at the licensee testing facility, special processing of suspect specimens), because they would be redundant with other portions of the proposed rule. Proposed requirements related to transferring specimens from a licensee testing facility to an HHS-certified laboratory for further testing would be moved to proposed § 26.129(g) in Subpart F [Licensee Testing Facilities] for organizational clarity. The proposed rule would also eliminate the third sentence of the current paragraph, which requires the collector to sign and date the tape used to seal the container. This requirement would be eliminated because licensees and other entities now rely upon courier services to transfer specimens who offer other means of tracking the date that a container of specimens is shipped and the sender that program experience has shown are equally effective. The proposed paragraph would retain the intended meaning of the current requirements for the collector to place the specimens in a second container that minimizes the possibility of damage during shipment and seal them so that tampering will be detected. At the request of stakeholders during the public meetings discussed in Section V, the proposed rule would add shipping bags to the current set of examples of acceptable shipping containers that protect the specimens from damage. Also at the request of stakeholders, the proposed rule would delete the last sentence of the current paragraph, which requires the collector to ensure that chain-of-custody documents are attached to the container that is used to ship the specimens to the licensee testing facility or laboratory. The stakeholders requested this change because their practice is to seal the specimens' custody-and-control documentation inside the shipping container to ensure that it cannot be altered. The NRC endorses this practice as providing greater protection for donors and, therefore, proposes this change.

Proposed § 26.117(j) would amend and combine the first sentence of current Section 2.4(i) in Appendix A to Part 26 with the requirements applicable to short-term storage of specimens at collection sites in current Section 2.7(c) in Appendix A to Part 26. The first sentence of current Section 2.4(i) in Appendix A to Part 26 would be moved to the proposed paragraph for the reasons discussed with respect to proposed § 26.117(i). Under the proposed paragraph, short-term refrigerated storage of specimens within 6 hours of collection would no longer be required for all specimens, as a result of advances in testing technologies. However, the proposed rule would continue to require licensees and other entities to protect specimens from any conditions that could cause specimen degradation. Collection site personnel would be required to refrigerate specimens that are not transferred or shipped to the licensee testing facility or the HHS-certified laboratory within 24 hours of collection. The proposed rule would also require that any specimens that may have been substituted or adulterated must be refrigerated as soon as they are collected, because some adulterants may interfere with drug testing results unless the specimen is refrigerated. The proposed rule would establish a time-limit of 2 business days for receipt of specimens at the licensee testing facility or HHS-certified laboratory, after shipment from the collection site, to further protect against potential specimen degradation.

Proposed § 26.117(k) would amend the portions of current Section 2.4(h) in Appendix A to Part 26 that require every individual in the chain of custody to be identified on a specimen's custody-and-control form. The proposed rule would not require couriers to meet the requirements in current Section 2.4(h), which state that each time a specimen is handled or transferred, the date and purpose of the transfer must be documented on the chain-of-custody form and every individual in the chain of custody must be identified. Couriers would not be required to meet these requirements because custody-and-control forms for individual specimens would be packaged inside the shipping container where they are inaccessible to couriers so that it is impractical to expect them to sign them when handling the specimen shipping containers. The proposed paragraph would codify licensees' and other entities' current practices of relying upon courier services' normal package tracking systems to maintain accountability for specimen shipping containers, which is consistent with the HHS Guidelines and standard forensic practices. The proposed rule would also eliminate the current requirement, contained in the last sentence of Section 2.4(h) in Appendix A to Part 26, to minimize the number of persons handling specimens because this requirement cannot be enforced.

Section 26.119 Determining ''Shy'' Bladder

A new § 26.119 [Determining ''shy'' bladder] would be adapted from the DOT Procedures at 49 CFR 40.193 to specify procedures for determining whether a donor who does not provide a urine specimen of 30 mL within the 3 hours that would be permitted for a specimen collection is refusing to test or has a medical reason for being unable to provide the required 30 mL specimen. The proposed section would be respond to stakeholder requests during the public meetings discussed in Section V. The stakeholders reported that some donors have had difficulty providing the 60 mL of urine that was required in current Section 2.4(g)(11) for medical reasons, but the current rule does not establish procedures for handling such circumstances. As a result, some FFD programs have adopted the DOT ''shy bladder'' procedures, but the stakeholders preferred that the proposed rule incorporate the requirements to (1) clarify that the NRC accepts the procedures; (2) inform donors of the procedures that they are required to

follow if they have medical reasons for being unable to provide a sufficient quantity of urine for testing; (3) enhance consistency among Part 26 programs; and (4) enhance the consistency of Part 26 procedures with the procedures that collectors must follow when conducting tests under DOT requirements. The NRC expects that fewer donors will be subject to ''shy bladder'' problems under the proposed rule because proposed § 26.109 [Urine specimen quantity] would reduce the minimum quantity of urine required from 60 mL in the current rule to 30 mL. However, because some donors' medical problems may also interfere with their ability to provide 30 mL of urine, the proposed rule would incorporate the DOT procedures. In general, the purpose of these proposed procedures is to protect the due process rights of individuals who are subject to Part 26. That is, the proposed section would establish procedures for ensuring that there is a legitimate medical reason that a donor was or is unable to provide a urine specimen of the required quantity so that the licensee or other entity has a medical basis for not imposing sanctions on the individual. In addition, the MRO would be authorized to devise alternative methods of drug testing, if it appears that the donor's medical problem would prevent him or her from being able to provide sufficient urine for drug testing in future tests.

Proposed § 26.119(a) would be added to require that a licensed physician, who has appropriate expertise in the medical issues raised by the donor's failure to provide a sufficient specimen, must evaluate a donor who was unable to provide a urine specimen of at least 30 mL. The MRO would be permitted to perform the evaluation, if the MRO possesses the appropriate expertise. If not, the MRO would be required to review the qualifications of the physician and agree to the selection of that physician. These proposed requirements for the physician who performs the evaluation to be qualified in the relevant medical issues are necessary to ensure that the results of the evaluation would be valid.

The proposed paragraph would also require that the evaluation must be completed within 5 days of the unsuccessful collection. The 5-day time limit would be established on the basis of a trade-off between the necessity to provide the donor with sufficient time to locate a qualified physician, obtain an appointment, and for the physician to complete the evaluation (*i.e.*, the donor's right to due process) and the public's interest in a rapid determination of whether the donor had attempted to subvert the testing process by refusing to provide a sufficient specimen. The DOT's experience has indicated that 5 days is sufficient to complete the evaluation.

Proposed § 26.119(b) would be added to specify the information that the MRO must provide to the physician who is selected to perform the evaluation if the MRO does not perform it. Proposed § 26.119(b)(1) and (b)(2) would require the MRO to inform the physician that the donor was required to take a drug test under Part 26 but was unable to provide a sufficient quantity of urine for testing, and explain the potential consequences to the donor for a refusal to test. These proposed requirements would ensure that the evaluating physician understands the context in which he or she is being asked to perform the evaluation. Proposed § 26.119(b)(3) would also require the MRO to inform the physician that he or she must agree to follow the procedures specified in proposed § 26.119(c)–(f) if he or she performs the evaluation. This proposed requirement would ensure that the physician understands and consents to follow the proposed procedures specified in this section.

Proposed § 26.119(c) would be added to describe the conclusions that the physician must provide to the MRO following the evaluation. Under proposed § 26.119(c)(1), the physician may determine that a medical condition has, or with a high degree of probability could have, precluded the donor from providing the required quantity of urine. Or, under proposed § 26.119(c)(2), the physician may determine that there is an inadequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the donor from providing a sufficient quantity of urine. The proposed rule would limit the physician's conclusions to one of these two alternatives in order to ensure that the results of the evaluation are relevant to and useful for determining whether sanctions must be imposed on the donor for a refusal to test.

Proposed § 26.119(d) would be added to define the physical and psychological conditions that would constitute a medical condition that could have precluded the donor from providing a 30 mL specimen and provide examples of conditions that would not constitute a legitimate medical condition. Legitimate medical conditions would include an ascertainable physiological condition (*e.g.*, a urinary system dysfunction) or a medically documented pre-existing psychological disorder that precluded the donor from providing a 30 mL specimen. Unsupported assertions of ''situational anxiety'' or dehydration would be examples of conditions that could not be considered legitimate medical conditions. The proposed rule would add this paragraph to provide necessary guidance to the evaluating physician.

Proposed § 26.119(e) would be added to require the evaluating physician to provide a written statement of his or her findings and conclusion from the evaluation. By implication, if the MRO performs the evaluation, the MRO would provide this written statement. The written statement would be necessary to communicate the results of the evaluation and create a record of it, should any question arise later with respect to the determination.

The proposed paragraph would also require that the physician must provide only the information that is necessary to support the physician's conclusion. This proposed requirement would be added to protect the donor's privacy by ensuring that the only medical information documented is information that is necessary to support the determination.

Proposed § 26.119(f) would be added to require the physician to inform the MRO, in the written statement, whether any medical condition that may be identified would also preclude the donor from providing specimens of 30 mL or more in future collections. This information would be necessary for the MRO to determine whether alternative methods of drug testing must be implemented for the donor, as required under proposed § 26.119(g)(3).

Proposed § 26.119(g) would be added to prescribe the actions to be taken by the MRO based on the results of the evaluation, as follows:

Proposed § 26.119(g)(1) would require the MRO to determine that the donor did not violate the FFD policy, if the physician concluded that a medical condition could account for the insufficient specimen and the MRO concurred with that conclusion. In this instance, the licensee or other entity would not impose sanctions on the donor because the donor had not violated the FFD policy by refusing to test.

Proposed § 26.119(g)(2) would require the MRO to determine that the donor had refused to be tested by failing to provide a sufficient specimen, if the physician concluded that a medical condition could not account for the insufficient specimen. In this instance, the licensee or other entity would impose the sanction of a permanent denial of authorization for an attempt to subvert the testing process, as required under proposed § 26.75(b).

Proposed § 26.119(g)(3) would require the MRO to devise an alternative method of collecting specimens for drug testing, if the donor's medical condition would, over the long-term, consistently prevent the donor from providing urine specimens of 30 mL or more. For example, the proposed provision would permit the MRO to direct the collection and testing of alternate specimens, including, but not limited to, hair, or other bodily fluids, if, in the MRO's professional judgment, the collection and analysis of these alternate specimens would be scientifically defensible and forensically sound. The proposed paragraph would grant flexibility to the MRO in exercising his or her professional judgment in determining an alternative method of conducting drug testing, rather than establish detailed requirements which may not appropriately address the range of possible medical conditions that could arise.

Subpart F—Licensee Testing Facilities

Section 26.121 Purpose

A new § 26.121 [Purpose] would be added to provide an overview of the contents of the proposed subpart, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Section 26.123 Testing Facility Capabilities

Proposed § 26.123 [Testing facility capabilities] would amend the second sentence of current Section 2.7(l)(2) in Appendix A to Part 26 as it relates to the capabilities of licensee testing facilities. The proposed paragraph would retain the current requirement for licensee testing facilities to be capable of performing initial tests for each drug and drug metabolite for which testing is conducted by the FFD program and would add a requirement for licensee testing facilities to have the capability to perform either validity screening tests, initial validity tests, or both. The first sentence of current Section 2.7(l)(2), which establishes requirements for the capabilities of HHS-certified laboratories would be moved to proposed Subpart G [Laboratories Certified by the Department of Health and Human Services]. The last sentence of the current paragraph, which permits the testing of breath specimens for alcohol at the collection site, would be deleted here because the proposed rule would address alcohol testing in Subpart E [Collecting Specimens for Testing]. These proposed organizational changes to the current paragraph would be made to meet Goal 6 of this rulemaking, which is to improve organizational clarity in the rule.

Section 26.125 Licensee Testing Facility Personnel

Proposed § 26.125 [Licensee testing facility personnel] would amend current Section 2.6 in Appendix A to Part 26, as follows:

Proposed § 26.125(a) would retain current Section 2.6(a) in Appendix A to Part 26, which requires each licensee testing facility to have one or more individuals who are responsible for the day-to-day operations of the facility and establishes requirements for those individuals' qualifications. The proposed paragraph would make minor changes in the language of this paragraph, which would be consistent with amended language in the related portion of the HHS Guidelines.

Proposed § 26.125(b) would amend current Section 2.6(b) in Appendix A to Part 26, which requires laboratory technicians and nontechnical staff to have the necessary training and skills for the tasks assigned to them. The proposed rule would retain the first sentence of the current provision, but would add another. The proposed rule would require laboratory technicians who perform urine specimen testing to demonstrate proficiency in operating the testing instruments and devices used at the licensee testing facility. This proficiency requirement would be added to ensure that technicians are capable of correctly using the instruments and devices that the licensee testing facility has selected for validity and drug testing. This proposed change is necessary for several reasons. First, the proposed rule would add new requirements for licensee testing facilities to conduct validity testing, and the instruments and devices that the technicians would be using are likely to differ from those previously used at licensee testing facilities. Therefore, additional training and proficiency testing would be required to ensure that validity testing would be conducted properly. Second, proposed rule permits licensees and other entities to rely on drug test results from testing that was performed by another Part 26 program to a greater extent than the current rule. Therefore, it is necessary to ensure that all drug testing performed under Part 26, including tests performed at licensee testing facilities, meets minimum standards. The proposed requirement for technicians to demonstrate proficiency, then, would contribute to meeting this goal. Third, the experience of other Federal agencies has shown that requirements for technicians to demonstrate proficiency assist in any litigation that may occur with respect to urine test results.

Proposed § 26.125(c) would amend current Section 2.6(c) in Appendix A to Part 26, which establishes recordkeeping requirements for the personnel files of licensee testing facility personnel. The current requirement for records of tests for color blindness would be eliminated here, consistent with a similar change to the HHS Guidelines. Tests for color blindness would no longer be necessary because current testing technologies provide means other than color for reading test results.

Section 26.127 Procedures

Proposed § 26.127 [Procedures] would combine, reorganize, and amend requirements for procedures that are interspersed throughout Appendix A to Part 26, including requirements in current Sections 2.2 and 2.7. These organizational changes would be made to improve clarity in the organization of the rule by grouping procedural requirements for licensee testing facilities in one section.

Proposed § 26.127(a) would make minor editorial changes to the first sentence of current Section 2.2 in Appendix A to Part 26, which requires licensee testing facilities and HHS-certified laboratories to have detailed procedures for conducting testing. The proposed rule would delete the current reference to blood samples because donors would no longer have the option to request blood testing for alcohol, as discussed with respect to proposed § 26.83(a). Reference to HHS-certified laboratories would be moved to proposed § 26.157(a) in Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve the organizational clarity of the rule. The proposed rule would also delete the current reference to procedures for specimen collections, because procedural requirements for specimen collections would be relocated to proposed Subpart E [Collecting Specimens for Testing].

Proposed § 26.127(b) would combine and amend portions of the requirements in the first sentence of current Sections 2.4(d) and 2.7(a)(2) in Appendix A to Part 26 related to the content and implementation of specimen chain-of-custody procedures. The proposed paragraph would retain the portions of the current paragraphs that require licensee testing facilities to develop, implement, and maintain written chain-of-custody procedures to maintain control and accountability of specimens from receipt through completion of

testing and reporting of results, during storage and shipping to the HHS-certified laboratory, and continuing until final disposition of the specimens. The current requirements related to HHS-certified laboratories would be moved to proposed § 26.157(b) in Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve organizational clarity. The proposed rule would also remove references to custody-and-control procedures for blood specimens because donors would no longer have the option to request blood testing for alcohol, as discussed with respect to proposed § 26.83(a).

Proposed § 26.127(c) would retain the portions of current Section 2.7(o)(1) in Appendix A to Part 26 that address the required content of procedures for licensee testing facilities and amend the current requirements. The proposed paragraph would retain the portions of the current provision that require licensee testing facilities to develop and maintain procedures to specify all of the elements of the testing process, including, but not limited to, the principles of each test and the preparation of reagents, standards, and controls. The proposed paragraph would present the required topics of the procedures in a list format in proposed § 26.127(c)(1)–(c)(12) to clarify that each topic stands on its own, and to improve clarity in the organization of the rule.

Proposed § 26.127(c) would also amend current Section 2.7(o)(1) in Appendix A to Part 26 in several ways. First, the proposed paragraph would eliminate the current requirement for the procedures to be maintained in a laboratory manual as unnecessarily restrictive. Licensee testing facilities would be permitted to use other means to maintain their procedures. Second, the proposed paragraph would add a requirement for the development, implementation, and maintenance of written standard operating procedures for validity testing instruments and devices, consistent with the addition of requirements to conduct validity testing throughout the proposed rule. Third, two portions of the current provision would be moved to other subparts of the proposed rule that address related topics to improve clarity in the organization and language of the rule, as follows: The last two sentences of current Section 2.7(o)(1) in Appendix A to Part 26, which address requirements for retaining copies of superceded procedures, would be relocated to § 26.215(a) of Subpart J [Recordkeeping and Reporting Requirements] of the proposed rule. Procedural requirements for HHS-certified laboratories would be moved to § 26.157(b) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services].

Proposed § 26.127(d) would amend current Section 2.7(o)(3)(iii) in Appendix A to Part 26, which requires procedures for the setup and normal operation of testing instruments, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks, and instructions for major troubleshooting and repair. The proposed paragraph would extend the current requirements to non-instrumented devices (such as some validity screening devices), if the licensee testing facility uses such devices, consistent with the addition of requirements to conduct validity testing throughout the proposed rule. The proposed rule would also make three organizational changes to the current provision. The proposed paragraph would present the required topics of the procedures in a list format in proposed § 26.127(d)(1)–(d)(3) to clarify that each topic stands on its own. The current requirement to maintain records of preventative maintenance would be relocated to § 26.215(b)(10) in Subpart J [Recordkeeping and Reporting Requirements] of the proposed rule. And, the current requirements that apply to HHS-certified laboratories would be moved to § 26.157(d) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services]. These proposed changes would made to improve clarity in the organization of the rule.

Proposed § 26.127(e) would reorganize and amend current Section 2.7(o)(4) in Appendix A to Part 26, which requires documented corrective actions if systems are out of acceptable limits or errors are detected. The proposed paragraph would extend the current requirement to non-instrumented validity screening devices, if the licensee testing facility uses such devices, consistent with the addition of requirements to conduct validity testing throughout the proposed rule. The requirements in the current paragraph that apply to HHS-certified laboratories would be moved to § 26.157(e) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity.

Section 26.129 Assuring Specimen Security, Chain of Custody, and Preservation

Proposed § 26.129 [Assuring specimen security, chain of custody, and preservation] would be added to group together in one section the requirements of the proposed rule that apply to licensee testing facilities with respect to the safeguarding of specimen identity, integrity, and security. This proposed organizational change would be made because requirements that address these topics are dispersed throughout the current rule whereas grouping them together in a single section would make them easier to locate within the proposed rule.

Proposed § 26.129(a) would retain the first four sentences of current Section 2.7(a)(1) in Appendix A to Part 26, which require licensee testing facilities to be secure and accessible only to authorized personnel. These requirements as they apply to HHS-certified laboratories would be moved to proposed § 26.159(a). The last sentence of the current paragraph, which establishes recordkeeping requirements, would be moved to § 26.215(b)(13) in proposed Subpart J [Recordkeeping and Reporting Requirements]. The proposed changes would be made for organizational clarity.

Proposed § 26.129(b) would amend current Section 2.7(b)(1) in Appendix A to Part 26, which establishes requirements for receiving specimens at the licensee testing facility and assuring their integrity and identity. The proposed rule would move the current requirements related to HHS-certified laboratories to § 26.159(b) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity. Several requirements would also be added to the proposed paragraph, as follows:

The proposed paragraph would add requirements for licensee or other entity management personnel to investigate any indications of specimen tampering and take corrective actions if tampering is confirmed. The proposed rule would add these requirements because some licensees have not investigated or taken corrective actions in response to indications of tampering with specimens under the current rule. The appropriate corrective actions that management personnel would take would depend upon the nature of the tampering identified as a result of the investigation. For example, if the investigation indicated that the tampering was an attempt to subvert the testing process and the persons involved were identified, management personnel would impose the sanctions in proposed § 26.75(b) for a subversion attempt. Management personnel would also be required to correct any systematic weaknesses in specimen custody-and-control procedures that may be

identified in the investigation, such as inadequate safeguarding of specimen shipping containers.

The proposed paragraph would also add a requirement for licensee testing facility personnel to attempt to resolve any discrepancies in the information on specimen bottles or on the accompanying custody-and-control forms to ensure the identity and integrity of specimens and prevent specimens from being unnecessarily rejected for testing by the HHS-certified laboratory (if the specimen must be subject to additional testing) when flaws can be corrected. For example, if the collector's signature is missing on the custody-and-control form, licensee testing facility personnel would work with collection site personnel to attempt to identify the collector and obtain the collector's signature on the form if possible. This proposed requirement would reduce the potential burden on donors who may otherwise be required to submit additional specimens to replace those for which the chain-of-custody could not be confirmed. The proposed requirements would also improve the efficiency of FFD programs by avoiding the need to conduct additional specimen collections when discrepancies can be corrected. The proposed provision would also meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

The proposed paragraph would also add a prohibition on testing of any specimens if the licensee or other entity has reason to believe that the specimens that were subject to tampering had been altered in such a manner as to affect specimen identity and integrity. In these circumstances, the MRO would cancel testing of the specimens or any test results from those specimens, and require the licensee or other entity to retest the donors who had submitted them. Although the NRC is not aware of any instances in which these circumstances have arisen in Part 26 programs, the experience of other Federal agencies indicates such tampering is possible. Therefore, this requirement would be necessary to ensure that individuals are not subject to sanctions for a non-negative test result from a specimen that may not have been theirs. The proposed change would be made to meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26. The additional provision would also be consistent with the requirements of other Federal agencies.

Proposed § 26.129(c) would amend current Section 2.7(b)(2) in Appendix A to Part 26, which establishes requirements for chain-of-custody procedures for specimens and aliquots at licensee testing facilities. The proposed rule would move the requirements in the current paragraph that are related to HHS-certified laboratories to proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve organizational clarity. In addition, the proposed paragraph would add a reference to specimen validity testing for consistency with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

The proposed paragraph would incorporate two additional changes to the current provision at the request of stakeholders at the public meetings discussed in Section V. The stakeholders requested that the proposed rule permit licensee testing facilities to use methods other than a custody-and-control form to maintain the chain of custody for aliquots of a specimen that are tested at the licensee testing facility. The proposed change would be incorporated because methods other than a custody-and-control form, such as the use of bar coding, have been shown to be equally effective at tracking the chain of custody for an aliquot at licensee testing facilities. Continuing to permit such flexibility would be consistent with Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

The stakeholders also requested that the proposed paragraph specify the conditions under which specimens and aliquots may be discarded because the current rule does not address discarding of negative specimens. Therefore, the proposed rule would permit licensee testing facilities to discard specimens and aliquots as soon as practical after validity screening or initial validity tests have demonstrated that the specimen appears to be valid and initial test results for drugs and drug metabolites are negative. The proposed clarification would codify current licensee practices. This permission would have no impact on donors' rights under the rule, because donors are not at risk of management actions or sanctions as a result of negative test results and, therefore, would not need the licensee testing facility to retain the specimen for additional testing for review or litigation purposes. The proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.129(d) would update current Section 2.7(a)(2) in Appendix A to Part 26, which requires licensee testing facility personnel to maintain and document the chain of custody for specimens and aliquots. The proposed paragraph would incorporate the simpler language of the related provision from the HHS Guidelines while retaining the intent of the current paragraph. The proposed rule would relocate the requirements in the current paragraph that are related to HHS-certified laboratories to § 26.159(d) and (e) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve organizational clarity.

Proposed § 26.129(e) would amend the first sentence of current Section 2.7(d) in Appendix A to Part 26, which requires specimens that test as ''presumptive positive'' at the licensee testing facility to be shipped to the HHS-certified laboratory for further testing. The proposed rule would replace the term, ''presumptive positive,'' with the term, ''non-negative,'' in order to address validity testing results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). For organizational clarity, the requirements in current Section 2.7(d) in Appendix A to Part 26 that relate to quality control procedures for testing at licensee testing facilities and HHS-certified laboratories would be moved to proposed §§ 26.137 [Quality assurance and quality control] and 26.167 [Quality assurance and quality control], respectively.

Proposed § 26.129(f) would clarify and revise current Section 2.7(c) in Appendix A to Part 26, as it relates to refrigerating urine specimens to protect them from degradation. For organizational clarity, the proposed rule would move the current requirements that apply to HHS-certified laboratories to proposed § 26.159(h) in Subpart G [Laboratories Certified by the Department of Health and Human Services]. The proposed paragraph would restate portions of the current provision and add a performance standard regarding ''appropriate and prudent actions'' to minimize specimen degradation. For the reasons discussed with respect to proposed § 26.117(j), the proposed rule would no longer require all specimens to be refrigerated within 6 hours after collection, but would add a requirement that any specimen that has not been tested within 24 hours of receipt at the licensee testing facility

must be refrigerated. The proposed paragraph would continue to require the licensee or other entity to refrigerate any specimen (and the associated Bottle B for that specimen, if the FFD program follows split specimen procedures) that yields non-negative results from initial drug testing at the licensee testing facility. The proposed rule would also add a requirement for refrigerating any specimen (and the associated Bottle B) that yields non-negative results from validity screening or initial validity testing at the licensee testing facility. Refrigerating these specimens would be necessary because some adulterants have been shown to interfere with drug test results more rapidly if the specimen remains at room temperature.

The proposed rule would eliminate as unnecessary the last sentence of the current paragraph, which requires licensee testing facilities to ensure that emergency power equipment is available to maintain the specimens cooled in the event of a power failure. With improvements in the courier services available to licensee testing facilities since Part 26 was first published, licensee testing facilities are typically able to ship specimens to the HHS-certified laboratory on the same day that specimens are tested. Further, program experience since the rule was implemented indicates that the periods of time that licensee testing facilities are without off-site power are typically limited to a few hours at most, which would not be long enough for specimen degradation to occur. Therefore, the proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

The proposed rule would also update the terminology used in the current paragraph to be consistent with the new terminology adopted throughout the proposed rule for referring to split specimens. Therefore, in the proposed paragraph, the licensee testing facility would continue to be responsible for protecting from degradation the primary specimen (Bottle A) and the specimen in Bottle B of a split specimen, if the FFD program follows split specimen procedures. The licensee testing facility would also be required to refrigerate any specimen that yields non-negative test results, Bottle B of any specimen in Bottle A that tests as non-negative, and any specimen that is not tested within 24 hours of receipt at the licensee testing facility. These changes in the terminology of the proposed paragraph would be made to improve clarity in the language of the proposed rule.

Proposed § 26.129(g) and (h) would separate current Section 2.4(i) in Appendix A to Part 26 into two paragraphs for organizational clarity and amend the current provision for the reasons previously discussed with respect to proposed § 26.117(i) and (k). Proposed § 26.129(g) and (h), which repeat the requirements for packaging and shipping specimens contained in proposed § 26.117(i) and (k) of Subpart E [Collecting specimens for testing], would apply these requirements to packaging and shipping specimens from licensee testing facilities to HHS-certified laboratories. The bases for these requirements are discussed with respect to proposed §§ 26.117(i) and (k).

Section 26.131 Cutoff Levels for Validity Screening and Initial Validity Tests

A new § 26.131 [Cutoff levels for validity screening and initial validity tests] would be added to establish cutoff levels for validity screening and initial validity tests at licensee testing facilities for creatinine, pH, and oxidizing adulterants. The procedures, substances, and cutoff levels for initial validity testing in the proposed section would incorporate the related requirements from the HHS Guidelines (69 FR 19643; April 13, 2004). The proposed validity screening test requirements would be adapted from the HHS proposed revision to the Guidelines that was also published in the **Federal Register** on April 13, 2004 (69 FR 19673).

By contrast to the requirements for initial validity testing in the HHS Guidelines, the proposed rule would not require licensee testing facilities to evaluate the specific gravity of a specimen that has a creatinine concentration of less than 20 milligrams (mg) per deciliter (dL). Specimens with a low creatinine concentration may be dilute or substituted. Instead, if the specimen's creatinine concentration is less than 20 mg/dL, the proposed rule would require the licensee testing facility to forward the specimen to the HHS-certified laboratory to complete the testing, where the specimen's specific gravity would be measured. The proposed rule would differ from the HHS Guidelines in this provision because the costs of the instruments (i.e., refractometers) that are required in the Guidelines for measuring specific gravity are high. Some licensee testing facilities are currently measuring the specific gravity of specimens. However, the cutoff levels established in the Guidelines require more sensitive measurement and licensee testing facilities would be required to purchase new equipment in order to test at the new HHS specific gravity cutoff levels. Therefore, the proposed rule would require licensee testing facilities to ship specimens with low creatinine concentrations to the HHS-laboratory to complete the initial testing process and would not include cutoff levels for specific gravity or quality control requirements for measuring specific gravity in this proposed subpart. The NRC invites comment on this issue.

Proposed § 26.131(a) would be added to require licensee testing facilities to perform either validity screening tests, initial validity tests, or both. Consistent with related requirements for further testing of specimens that yield drug-positive results from initial testing at a licensee testing facility, the proposed rule would also require licensee testing facilities to forward specimens that yield non-negative validity testing results to an HHS-certified laboratory for further testing. Further testing at an HHS-certified laboratory is necessary because licensee testing facilities do not have the sophisticated testing instruments for conducting confirmatory testing that are required under the HHS Guidelines. In addition, further testing at an HHS-certified laboratory provides an independent check on test results from licensee testing facilities that is necessary to protect donors' rights to due process under Part 26, consistent with Goal 7 of this rulemaking.

As discussed in Section IV. C, the primary distinction between validity screening tests and initial validity tests is that validity screening tests may be performed using non-instrumented devices, such as dipsticks, whereas initial validity tests generally rely upon more complex testing technologies. The proposed rule would permit licensee testing facilities to perform validity screening tests before performing initial validity tests, but would not require them to do so, because validity screening tests would be unnecessary if the licensee testing facility will perform initial validity testing.

Proposed § 26.131(b) would be added to require licensee testing facilities to test each urine specimen for its creatinine concentration, pH, and the presence of one or more oxidizing adulterants, such as nitrite or bleach. Abnormal creatinine concentrations and pH values, and the presence of oxidizing adulterants are indicators that a specimen has been adulterated or substituted. The proposed rule would permit the FFD program to choose the oxidizing adulterant(s) for which testing would be conducted. The requirements in this proposed paragraph would be consistent with the related requirements in the current HHS Guidelines.

Proposed § 26.131(b) would also establish the criteria for determining whether a specimen must be forwarded to the HHS-certified laboratory for further validity testing. The proposed criteria would be incorporated from the current HHS Guidelines. Because validity testing is complex and the methods for testing are relatively new, the proposed rule would not permit an FFD program to establish more stringent cutoff levels for validity screening and initial validity testing. This proposed prohibition is necessary to decrease the risk of obtaining false non-negative test results and would ensure that donors are not subject to sanctions on the basis of inaccurate test results.

Section 26.133 Cutoff Levels for Drugs and Drug Metabolites

A new § 26.133 [Cutoff levels for drugs and drug metabolites] would amend current Section 2.7(e)(1) in Appendix A to Part 26, which establishes cutoff levels for initial testing for drugs and drug metabolites. Proposed § 26.133 would replace and amend some cutoff levels for initial tests for drugs and drug metabolites in current Section 2.7(e)(1) in Appendix A to Part 26 to be consistent with the HHS cutoff levels for the same substances.

The initial test cutoff level for marijuana metabolites would be decreased from 100 nanograms (ng) per milliliter (mL) to 50 ng/mL. Current immunoassay techniques can now reliably detect the presence of marijuana metabolites at this cutoff level. As discussed in Section IV. B, this proposed change would strengthen the effectiveness of FFD programs by increasing the likelihood of detecting marijuana use.

The proposed rule would increase the initial test cutoff level for opiate metabolites from 300 ng/mL in the current rule to 2,000 ng/mL. The proposed change in the cutoff level for opiate metabolites would substantially reduce the number of positive opiate test results that are reported to MROs by HHS-certified laboratories that MROs ultimately verify as negative.

The proposed rule would continue to permit licensees and other entities to establish more stringent cutoff levels for initial drug tests, subject to the requirements specified in proposed § 26.31(d)(3)(iii), for the reasons discussed with respect to that paragraph.

The current requirement for licensees and other entities to report drug test results for both the cutoff levels in the rule and more stringent cutoff levels would be eliminated in the proposed rule. The reason that the current rule requires FFD programs to report test results for the cutoff levels specified in this part, when the licensee is using more stringent cutoff levels, is that it provides means for the NRC to monitor licensees' implementation of the permission to use more stringent cutoff levels. The proposed rule would eliminate this requirement, because proposed § 26.31(d)(3)(iii)(C) would require a qualified forensic toxicologist to certify the scientific and technical validity of the licensee's or other entity's testing process at any lower cutoff levels. Therefore, the reporting requirement would no longer be needed to assure licensee testing facility performance in this area. Eliminating this requirement would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Section 26.135 Split Specimens

A new § 26.135 [Split specimens] would reorganize and amend the requirements contained in current Section 2.7(j) in Appendix A to Part 26 that relate to licensee testing facility handling of split specimens. The proposed requirements would apply only if the FFD program follows split specimen procedures. The current paragraph would be divided into separate paragraphs in the proposed section to indicate that each requirement stands on its own. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.135(a) would amend the second, third, and fourth sentences of current Section 2.7(j) in Appendix A to Part 26. The proposed rule would revise the terminology used in these sentences (e.g., ''Bottle A'' rather than ''primary specimen,'' ''Bottle B'' rather than ''split specimen,'' ''non-negative'' rather than ''presumptive positive'') to be consistent with terminology used in other parts of the proposed regulation without amending the meaning of the sentences. The requirement in the third sentence of current Section 2.7(j) to seal the split specimen prior to placing it in secure storage would be deleted in the proposed rule, because Bottles A and B would have already been sealed at the collection site, as required in proposed § 26.113(b)(3). The proposed paragraph would add a requirement to forward Bottle A of the split specimen to the HHS-certified laboratory, in the case of any non-negative validity test results at the licensee testing facility. This proposed requirement would be consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.135(b) would amend the requirements in current Section 2.7(j) in Appendix A to Part 26 related to donor requests for testing of the specimen in Bottle B. The proposed paragraph would add non-negative validity test results as a basis for a donor request for testing the specimen in Bottle B consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed paragraph would also add a requirement that the donor must request testing of the Bottle B specimen within 3 business days of being notified by the MRO that the specimen in Bottle A has yielded confirmed non-negative test results. Since 1994, the HHS Guidelines have allowed up to 72 hours for a donor to make this request, so the proposed change would increase the consistency of Part 26 with the HHS Guidelines to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

The proposed paragraph would also eliminate the requirement in the fourth sentence of current Section 2.7(j) in Appendix A to Part 26, which requires that the split specimen must be forwarded to another HHS-certified laboratory for testing on the same day of the donor request. Licensees and other entities would be permitted up to one business day to forward Bottle B to a second HHS-certified laboratory following the donor request. This proposed change would respond to stakeholder feedback provided during the public meetings discussed in Section V. The stakeholders reported that implementing the same-day requirement has often been difficult for a number of reasons, including, for example, communication delays among donors, MROs, and FFD program personnel, particularly on weekends and holidays, and the time required to identify a second laboratory with the appropriate capability to test the split specimen, depending upon the nature of the non-negative test result. The proposed rule would alleviate some of these types of logistical difficulties (e.g., logistical problems associated with weekends and holidays) while continuing to provide the donor with timely test results. Therefore, this proposed change would be made to meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

The proposed paragraph would also require the donor to provide written permission to the licensee or other entity for testing of the specimen contained in Bottle B and clarify that only the donor may authorize testing of Bottle B. Stakeholders have indicated that the requirement for a written request from donors would impose a substantial logistical burden for donors who may not be working on site when contacted by the MRO. However, the NRC believes that the proposed requirement is necessary to ensure that the donor's right to privacy and control of the specimen would be protected, consistent with Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.135(c) would update the terminology used in the portions of current Section 2.7(h) in Appendix A to Part 26 that apply to storing specimens at licensee testing facilities. For example, the proposed provision would replace the term, ''split specimen,'' with the term, ''Bottle B.'' The proposed paragraph would continue to require licensee testing facilities who retain Bottle B of a confirmed non-negative split specimen to store it in long-term frozen storage for at least one year before discarding it, or longer if the specimen is under legal challenge, or at the request of the NRC. The proposed rule would extend the current requirement to apply to Bottle B of any specimen that has yielded non-negative validity test results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The portions of current Section 2.7(h) in Appendix A to Part 26 that apply to HHS-certified laboratories would be moved to § 26.159(i) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve the organizational clarity of the rule.

Section 26.137 Quality Assurance and Quality Control

A new § 26.137 [Quality assurance and quality control] would amend current Section 2.8 in Appendix A to Part 26. The proposed section would add quality control requirements for performing validity screening tests, initial validity tests, and initial tests for drugs and drug metabolites at the licensee testing facility, for the reasons to be discussed with respect to each proposed paragraph. The portions of current Section 2.8 in Appendix A to Part 26 that establish requirements for HHS-certified laboratories would be moved to § 26.167 in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity.

Proposed § 26.137(a) [Quality assurance program] would amend current Section 2.8(a) in Appendix A to Part 26, which requires licensee testing facilities and HHS-certified laboratories to have a quality assurance program for all aspects of the testing process. The requirements for HHS-certified laboratories would be moved to § 26.167(a) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve organizational clarity. The proposed paragraph would extend the current requirements for licensee testing facilities to have a quality assurance program and procedures to validity testing at the licensee testing facility, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.137(b) [Performance testing and quality control requirements for validity screening tests] would be added to establish requirements for conducting validity screening tests for the reasons discussed with respect to proposed § 26.31(d)(3)(i). The proposed requirements in this paragraph are based upon requirements that have been proposed by HHS in a Notice of Proposed Revisions to the Mandatory Guidelines dated April 13, 2004 (69 FR 19673).

Proposed § 26.137(b)(1) would permit licensee testing facilities to use non-instrumented devices, such as dipsticks, to determine whether a specimen appears to be valid or must be subject to further validity testing. However, in proposed § 26.137(b)(1)(i) and (ii), licensee testing facilities would be permitted to use only non-instrumented devices that either have been cleared by the U.S. Food and Drug Administration and placed on the SAMHSA list of point-of-collection testing devices that are certified for use in the Federal Workplace Drug Testing Program, as published in the **Federal Register**, or that meet the performance testing criteria set forth in proposed § 26.137(b)(1)(ii). SAMHSA has yet to publish a list of certified devices, but, in order to be added to SAMHSA's list, SAMHSA will require that a device must meet the performance testing requirements that are contained in proposed § 26.137(b)(1)(ii). Therefore, adding these requirements to the proposed rule would permit licensee testing facilities to conduct the required performance testing and begin using any devices that meet the criteria before SAMHSA's list is published.

The NRC is aware that the performance testing requirements in proposed § 26.137(b)(1)(ii) are stringent and that few, if any, validity screening devices are yet available that meet them. However, because individuals may be subject to a temporary administrative withdrawal of authorization on the basis of a non-negative initial drug test result for marijuana or cocaine from a specimen that appears to be valid [see proposed § 26.75(i)], it is critical that any validity screening devices used in Part 26 programs provide accurate results. The proposed performance testing requirements would be necessary to protect donors from inaccurate results, as well as ensure that specimens of questionable validity would be detected.

Proposed § 26.137(b)(1)(iii) and (b)(1)(iv) would require licensee testing facilities to ensure that any validity screening devices placed into service continue to be effective in determining the validity of urine specimens. Proposed § 26.137(b)(1)(iii) would require licensee testing facilities to ensure that the device(s) either remains on the SAMHSA list of certified devices (when it becomes available) or continues to meet the performance testing criteria in proposed § 26.137(b)(1)(ii)(A)–(b)(1)(ii)(C) by conducting further performance testing on a nominal yearly schedule. The proposed requirement would be consistent with the related requirement in HHS's proposed revisions to the Guidelines. Proposed § 26.137(b)(1)(iv) would require licensee testing facilities to ensure that the manufacturer of any validity screening device used informs the licensee or other entity of modifications to the device, so that the licensee or other entity may determine whether additional performance testing is required to demonstrate that the modified device continues to be effective. These proposed provisions would be necessary to protect donors from inaccurate results, as well as provide assurance that specimens of questionable validity are detected.

Proposed § 26.137(b)(2) would require licensee testing facility personnel to use the validity screening device to test quality control samples at the beginning of any 8-hour period during which validity screening tests will be performed. The proposed rule would require the quality control samples to consist of one sample that is certified as negative and one that is non-negative for the specific validity test for which the device is designed. For example, if the device tests for nitrite, licensee testing

facility personnel would use a certified quality control sample containing nitrite. If the device fails to perform correctly when testing the quality control samples, the proposed rule would require the licensee testing facility to stop using it immediately and initiate the investigation required in proposed § 26.137(f). If the test result is a false negative, the last sentence of the proposed paragraph would require the licensee or other entity to notify the NRC. The proposed rule would not require notifying the NRC of a false positive result because any specimen that yields a non-negative validity screening test result would be forwarded to the HHS-certified laboratory for further testing, and licensees and other entities would be prohibited from taking any management actions until the HHS-certified laboratory completes testing of the specimen and the MRO has reviewed the results. Therefore, false positive test results from the device would not impose a burden on donors. These proposed procedures are necessary to protect donors from inaccurate test results, as well as to provide assurance that specimens of questionable validity are detected.

Proposed § 26.137(b)(3) would require licensee testing facility personnel to submit 1 out of every 10 donor specimens that yield negative results using the device to the HHS-certified laboratory. If the HHS-certified laboratory's results indicate that the device had provided a false negative result, the proposed rule would require the licensee testing facility to stop using the device immediately, initiate the investigation required in proposed § 26.137(f), and notify the NRC.

The NRC notifications that would be required in proposed § 26.137(a) and (b) would be necessary because false negative results from a validity screening device could mean that some attempts to subvert the testing process may not be detected. For example, if an individual had adulterated his or her specimen and it was not detected because of a faulty device, the licensee or other entity would have no reason to terminate the individual's authorization. As a result, the individual, who has demonstrated that he or she is not trustworthy and reliable, would be permitted to perform job duties under this part and pose a risk to public health and safety and the common defense and security. The NRC would use the information to ensure that HHS is notified of the device failure as well as inform other licensees and entities who may also be using the device of the false negative results to prevent additional testing errors. Therefore, the proposed notifications would be necessary to protect donors from inaccurate test results, to ensure that specimens of questionable validity are detected, and to ensure that any problems with a device are detected and corrected as soon as possible.

Proposed § 26.137(b)(4) would require that any non-instrumented validity screening device used by a licensee testing facility must be capable of measuring creatinine to 1 decimal place. This proposed requirement would be necessary to ensure that the device can support the creatinine cutoff levels established in the HHS Guidelines, as incorporated into the proposed rule.

Proposed § 26.137(b)(5) and (b)(6) would establish quality control requirements for performing validity screening tests for pH and oxidizing adulterants, respectively. These proposed requirements would incorporate the related requirements in the proposed HHS Guidelines.

Proposed § 26.137(c) [Non-negative validity screening test results] would be added to specify the actions that the licensee testing facility must take if the results of validity screening tests are non-negative. If validity screening test results are non-negative, the proposed rule would require instrumented initial validity testing either at the licensee testing facility or the HHS-certified laboratory. This proposed provision would be consistent with current requirements for handling specimens that test as drug-positive on initial tests at a licensee testing facility. The proposed requirement would be necessary to protect donors from inaccurate test results, as well as provide assurance that specimens of questionable validity are detected using the more sophisticated technologies required for instrumented initial validity testing in the HHS Guidelines and the proposed rule.

Proposed § 26.137(d) [Quality control requirements for performing initial validity tests] would be added to specify the required methods for performing initial validity tests at a licensee testing facility to ensure that initial validity testing at the licensee testing facility would provide accurate results. The proposed requirements in this paragraph would incorporate the related requirements in the HHS Guidelines as revised on April 13, 2004 (69 FR 19644). The proposed paragraph would be added to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.137(d)(1) would require licensee testing facilities to measure creatinine concentration to 1 decimal place and would establish requirements for the controls to be used in initial tests for creatinine concentration.

Proposed § 26.137(d)(2) would establish quality control requirements for performing initial pH tests. Proposed § 26.137(b)(2)(i)–(b)(2)(v) would specify the required calibrators and controls for initial pH testing, based upon the type of testing instrument used and whether a pH validity screening test has been performed.

Proposed § 26.137(d)(3) would establish quality control requirements for performing initial tests for oxidizing adulterants, including nitrite, and proposed § 26.137(d)(4) would establish quality control requirements for performing initial tests for ''other'' adulterants at the licensee testing facility.

Proposed § 26.137(e) [Quality control requirements for initial drug tests] would amend and combine portions of current Sections 2.7(d), 2.7(e)(1), and 2.8(b) in Appendix A to Part 26, which establish quality control requirements for performing initial tests for drugs and drug metabolites at licensee testing facilities. The proposed paragraph would group together in one paragraph the current requirements that are dispersed throughout the rule to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.137(e)(1) would amend the first sentence of current Section 2.7(e)(1) in Appendix A to Part 26 but retain the intent of the current provision as it applies to licensee testing facilities. The current and proposed paragraphs require licensee testing facilities to use only immunoassay tests that meet the requirements of the Food and Drug Administration for commercial distribution. The requirements in the current paragraph related to initial drug testing at HHS-certified laboratories would be moved to § 26.167(d)(1) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] to improve organizational clarity in the rule.

In addition, the proposed paragraph would prohibit licensee testing facilities from relying on drug test results from any devices they may use to perform validity screening tests. This proposed prohibition would be added because several non-instrumented devices are available that combine tests for the presence of drugs and drug metabolites in a urine specimen with tests for other attributes of a urine specimen, such as creatinine concentration. The proposed

rule would permit licensee testing facilities to use such combination devices for validity screening tests, if the devices meet the requirements of proposed § 26.137(b)(1). However, the drug testing capabilities of these devices are not yet sufficiently accurate and sensitive to be used in Part 26 programs, in which licensees and other entities would be permitted to administratively withdraw an individual's authorization on the basis of positive initial drug test results for marijuana and cocaine metabolites. The NRC may consider accepting the use of initial drug test results from non-instrumented devices in a future rulemaking, when HHS publishes a final revision to the Mandatory Guidelines that establishes requirements for their use in Federal workplace drug testing programs. At this time, however, the proposed rule would retain the current prohibition on using such devices for drug testing at licensee testing facilities.

Proposed § 26.137(e)(2) would be added to require licensee testing facilities to either discard specimens that yield negative results from initial tests at the licensee testing facility or pool them and use these specimens as quality control specimens, if the specimens are certified as drug negative and valid by an HHS-certified laboratory. The proposed paragraph would incorporate the related provision from the HHS Guidelines and would be added to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.137(e)(3) would permit licensee testing facilities to conduct multiple tests of a single specimen for the same drug or drug class. The requirements in the proposed paragraph would also be consistent with a similar provision in the HHS Guidelines and would be added for the same reasons discussed with respect to § 26.137(e)(2).

Proposed § 26.137(e)(4) would amend the first sentence of current Section 2.8(b) in Appendix A to Part 26, which states that licensee testing facilities are not required to assess their false positive rates in drug testing. The proposed paragraph would retain the intent of the current requirement, but the terminology used in the paragraph would be revised to use the new terms that are used throughout the proposed rule, *e.g.*, ''initial'' rather than ''screening,'' as discussed with respect to proposed § 26.5 [Definitions].

Proposed § 26.137(e)(5) would amend the second sentence of current Section 2.8(b) in Appendix A to Part 26, which requires licensee testing facilities to submit specimens that yield negative results from initial testing to the HHS-certified laboratory as a quality control check on the licensee testing facility's drug testing process. The proposed paragraph would retain the intent of the current provision but make several changes to the specific requirements.

The proposed paragraph would use the term, ''analytical run,'' rather than the current term, ''test run,'' to reflect changes in testing technologies that some licensee testing facilities have adopted since the current rule was published. Requirements for blind performance and other quality control testing in the current rule were based on the assumption that specimens would be tested in batches. However, many licensee testing facilities now conduct continuous testing, and no longer test specimens in batches. Therefore, the proposed rule would use the term, ''analytical run,'' to refer to both batch and continuous processing, as defined in proposed § 26.5 [Definitions]. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

The current rule does not establish a number or percentage of negative specimens that licensee testing facilities are required to submit to the HHS-certified laboratory for performance testing, which has raised implementation questions from licensees who have wanted to know how many specimens must be submitted. Therefore, to clarify the current requirement to ''submit a sampling of specimens,'' the proposed rule would require licensee testing facilities to forward at least one specimen that yields negative drug test results from each analytical run to the HHS-certified laboratory for performance testing. The proposed paragraph would also establish 5 percent of the specimens tested in each analytical run as the percentage of negative specimens that the licensee testing facility must submit to the HHS-certified laboratory for testing, except if 5 percent of an analytical run would be a number less than one specimen. In the latter case, the licensee testing facility would submit at least one negative specimen from the analytical run. The proposed requirement would ensure the ongoing evaluation of the accuracy of the licensee testing facility's initial drug testing without imposing a large performance testing burden.

The proposed rule would move the requirement for testing blind performance test samples in current Section 2.8(b) in Appendix A to Part 26 to proposed § 26.137(d)(7). The last sentence of the current paragraph, which addresses performance testing of breath analysis equipment for alcohol testing, would be moved to proposed § 26.91(e) in Subpart E [Collecting Specimens for Testing]. The proposed rule would reorganize the current requirements and group them with related requirements to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule.

Proposed § 26.137(e)(6) would amend the requirements of current Section 2.8(c) in Appendix A to Part 26 and apply them to licensee testing facilities. The proposed rule would apply requirements for quality controls to licensee testing facilities to provide greater assurance that initial drug tests performed by these facilities provide accurate results. The increased performance testing would be necessary because the proposed rule permits licensees and other entities to rely on test results from other Part 26 programs to a greater extent than the current rule. Therefore, it is necessary to ensure that any tests performed at licensee testing facilities meet minimum standards. This proposed change would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs.

Proposed § 26.137(e)(6)(i)–(e)(6)(iii) would be added to describe the required characteristics of the quality control samples that the licensee testing facility must include in each analytical run of specimens. The proposed paragraphs would require each analytical run to include at least one negative quality control sample as well as quality control samples targeted at 25 percent above the cutoff and at 75 percent of the cutoff level for each drug and drug metabolite for which testing is conducted. The proposed requirements would be consistent with the requirements for processing quality control samples during initial drug testing in the HHS Guidelines.

Proposed § 26.137(e)(7) would establish requirements for the number of quality control samples to be included in each analytical run at the licensee testing facility. The proposed rule would require that a minimum of 10 percent of the specimens in each analytical run must be quality control samples. The quality control samples included in the run could be any combination of the types of quality control samples specified in proposed § 26.137(d)(6)(i)–(d)(6)(iii). However, the proposed paragraph would require that one percent or at least one of the quality control samples included in each run must be a blind performance test sample. For example, if an analytical run tested 50 donor specimens, the

licensee testing facility would include 5 quality control samples in the run. At least one of the 5 would be required to be a blind test sample, and it could be either a blank or a sample fortified with a drug or metabolite at either 25 percent above the FFD program's cutoff level or at 75 percent of the cutoff level. The remaining 4 samples could include any combination of blanks and fortified samples. Licensee testing facilities would be expected to vary the drugs and drug metabolites used to fortify the quality control samples. The licensee testing facility would not send the quality control samples to the HHS-certified laboratory for testing, but use them for internal quality control purposes only. The proposed requirements in this paragraph would incorporate the related requirements in the HHS Guidelines and would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.137(e)(8) would extend to licensee testing facilities the existing requirement in the third sentence of the last paragraph of current Section 2.8(c) in Appendix A to Part 26, which requires HHS-certified laboratories to implement procedures to ensure that carryover does not contaminate the testing of a donor's specimen and to document the procedures. The proposed rule would extend this requirement to licensee testing facilities because it is a standard forensic practice that is necessary to ensure the integrity of the testing process.

Proposed § 26.137(f) [Errors in testing] would be added to require licensees and other entities who maintain testing facilities to investigate any errors or unsatisfactory performance of the testing process, identify the cause(s) of the adverse conditions, and correct them. The proposed rule would require the licensee or other entity to document the investigation and any corrective actions taken. The proposed revision would clarify that licensees must investigate any testing errors or unsatisfactory performance identified throughout the testing process or during the review process that would be required under proposed § 26.91 [Review process for fitness-for-duty policy violations]. The NRC intended, in the original rule, that testing or process errors discovered in any part of the program, including through the review process, be investigated as an unsatisfactory performance of a test. Thorough investigation and reporting of such test results will continue to assist the NRC, the licensees, HHS, and the HHS-certified laboratories in preventing future occurrences. The proposed paragraph would also require the cause of the condition be determined and corrective action be taken and documented for consistency with Criterion XVI in Appendix B of 10 CFR Part 50.

Proposed § 26.137(g) [Accuracy] would retain current Section 2.7(o)(3)(i) in Appendix A to Part 26, which requires checking the instruments used in testing for accuracy, as it applies to licensee testing facilities. The proposed rule would move the current requirement as it relates to HHS-certified laboratories to § 26.167(h) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity.

Proposed § 26.137(h) [Calibrators and controls] would update current Section 2.7(o)(2) in Appendix A to Part 26, which establishes requirements for the standards and quality control samples used for performance testing. At the time the original paragraph was written, most laboratories prepared their own standards and controls. In the ensuing years, the number and variety of sources for materials used in performance testing have increased. The proposed paragraph would update the existing requirements to refer to several of the alternatives, including, but not limited to, pure drug reference materials, stock standard solutions from other laboratories, and standard solutions obtained from commercial manufacturers. The proposed requirements in this paragraph would incorporate the related requirements in the HHS Guidelines and would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Section 26.139 Reporting Initial Validity and Drug Test Results

A new § 26.139 [Reporting initial validity and drug test results] would combine existing requirements related to the reporting and management of test results from the licensee testing facility that are interspersed throughout current Appendix A to Part 26. This proposed change would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization of the rule, by grouping related requirements together in a single section.

Proposed § 26.139(a) would amend current Section 2.7(g)(2) in Appendix A to Part 26, which establishes requirements for the manner in which HHS-certified laboratories and licensee testing facilities must report test results to licensee management. The requirements in the current paragraph that are related to reporting test results from HHS-certified laboratories would be moved to § 26.169(b) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity. The proposed paragraph would delete the current reference to ''special processing'' and replace it with reference to validity test results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.139(b) would amend the last sentence of current § 26.24(d)(1), which specifies the individuals to whom results of initial tests from the licensee testing facility may be released. The proposed paragraph would add the MRO's staff to the list of individuals who would be permitted to have access to the results of initial tests performed at the licensee testing facility consistent with the addition of this job role to the proposed rule. Individuals who are serving as MRO staff members would require access to initial test results from a licensee's testing facility in the course of performing their administrative duties for the MRO.

Proposed § 26.139(c) would amend current Section 2.7(o)(5) in Appendix A to Part 26. The requirements in the current paragraph that address the availability of personnel to testify in proceedings related to drug test results from an HHS-certified laboratory would be moved to § 26.153(f)(2) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity. The proposed rule would move the current requirement for licensee testing facility personnel to be available to testify at any proceedings with respect to breath analysis test results to proposed § 26.85(d) because licensee testing facilities are typically not responsible for quality control of alcohol testing, which is conducted at the collection site.

Proposed § 26.139(d) would amend the portions of current Section 2.7(g)(6) in Appendix A to Part 26 that apply to the summary report that licensee testing facilities must provide to FFD program management. The current requirement for the licensee testing facility to prepare a monthly report of test results would be replaced with a proposed requirement for the licensee testing facility to summarize the data annually in the FFD program performance report required in proposed § 26.217(b). Experience implementing the current requirement for a monthly statistical

summary has indicated that the monthly summary has not been as useful to licensees for ongoing monitoring of testing program effectiveness as other mechanisms that licensees have developed. Therefore, the requirement in proposed § 26.139(f) for FFD program management to monitor the ongoing effectiveness of the licensee testing facility testing program would replace the monthly reporting requirement in Section 2.7(g)(6). This proposed change would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements. The requirements in the current paragraph that address summary reports from HHS-certified laboratories would be moved to § 26.169(k) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity.

Proposed § 26.139(e) would amend current Section 2.7(g)(7) in Appendix A to Part 26, which requires licensee testing facilities and HHS-certified laboratories to report test results for both the cutoff levels specified in this part and any more stringent cutoff levels used by the FFD program. The current requirement related to HHS-certified laboratories would be relocated to § 26.169(c) of proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity. The proposed rule would require licensees and other entities who operate testing facilities and have adopted more stringent cutoff levels for initial tests for drugs and drug metabolites than those specified in proposed § 26.133 [Cutoff levels for drugs and drug metabolites], to conduct tests and report test results based only on their more stringent cutoff levels. The basis for the current requirement to conduct tests and report test results for the cutoff levels specified in this part, when the licensee is using more stringent cutoff levels, was a method by which the NRC monitored licensee implementation of the permission to use more stringent cutoff levels. The proposed rule would eliminate this requirement, because proposed § 26.31(d)(3)(iii)(C) would require a qualified forensic toxicologist to certify the scientific and technical validity of the licensee's or other entity's testing process at any lower cutoff levels. Therefore, the testing and reporting requirement would no longer be needed to monitor licensee testing facility performance in this area. The proposed rule would continue to require licensee testing facilities to report test results (and the cutoff levels used) from testing for additional drugs and drug metabolites, beyond those specified in proposed § 26.31(b)(1).

Proposed § 26.139(f) would be added to require FFD program management to monitor the ongoing effectiveness of the licensee testing facility testing program. The proposed rule would provide examples of the types of information and possible program performance indicators that licensees and other entities may use for program monitoring. The proposed rule would also require FFD program management to make adjustments to the testing program in response to information gained from the ongoing monitoring. The proposed requirements would replace the current monthly summary reporting requirement in current Section 2.7(g)(7) in Appendix A to Part 26 to strengthen FFD programs by ensuring that licensees monitor licensee testing facility performance on an ongoing basis and correct any weaknesses as they are identified. The proposed paragraph also would be consistent with the NRC's performance-based approach to regulation. This proposed change would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, as discussed in Section IV. B.

Subpart G—Laboratories Certified by the Department of Health and Human Services

Section 26.151 Purpose

Proposed § 26.151 [Purpose] would be added to introduce the purpose of the proposed subpart, which is to establish requirements for the HHS-certified laboratories that licensees and other entities must use for testing urine specimens for validity and the presence of drugs and drug metabolites. This proposed section would be added to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule. The majority of the requirements in this proposed subpart would be based upon the current requirements in Appendix A to Part 26, as they relate to HHS-certified laboratories. However, the current requirements would be updated to be consistent with the Department of Health and Human Services' revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines), as published in the **Federal Register** on April 13, 2004 (69 FR 19643).

Section 26.153 Using Certified Laboratories for Testing Urine Specimens

A new § 26.153 [Using certified laboratories for testing urine specimens] would be added to present together requirements related to the use of HHS-certified laboratories by licensees and other entities who would be subject to the rule.

Proposed § 26.153(a) would combine and update current requirements for licensees and other entities to use HHS-certified laboratories for initial and confirmatory drug testing of urine specimens. The proposed paragraph would relocate and combine current § 26.24(f), the second sentence of Section 1.1(3), and Section 4.1(a) in Appendix A to Part 26, which require licensees and other entities to use HHS-certified laboratories for drug testing. The proposed change would be made to eliminate redundancies in the current rule and improve organizational clarity. The proposed paragraph would update the current citations for the HHS Guidelines because the Guidelines have been amended several times since the current rule was published. In addition, the proposed rule would provide current contact information for obtaining information about the certification status of HHS-certified laboratories because the contact information also has changed since the current rule was published. The proposed paragraph would also add a requirement for licensees and other entities to use HHS-certified laboratories for initial and confirmatory validity testing, consistent with the addition of urine specimen validity testing requirements to the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The cross-reference to current § 26.24(d), which permits licensee testing facilities to conduct initial drug tests, would be updated to reference the related provision in the proposed rule, proposed § 26.31(d)(3)(ii).

Proposed § 26.153(b) would amend the first sentence of current Section 2.7(l)(2) in Appendix A to Part 26, which requires HHS-certified laboratories to have the capability, at the same laboratory premises, of performing initial and confirmatory tests for any drug and drug metabolite for which service is offered and confirmatory testing of blood for alcohol concentrations. The current requirement for HHS-certified laboratories to be capable of conducting confirmatory alcohol testing of blood would be deleted for the reasons discussed with respect to proposed § 26.83(a). The proposed paragraph would add a requirement for HHS-certified laboratories to have the capability to perform both initial validity and confirmatory validity tests at the same premises for consistency with the

addition of requirements to perform validity testing to the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The second sentence of current Section 2.7(l)(2), which establishes requirements for the capabilities of licensee testing facilities, would be moved to proposed § 26.123 [Licensee testing facility capabilities] of Subpart F [Licensee Testing Facilities] for organizational clarity. The last sentence of the current paragraph, which permits the testing of breath specimens for alcohol at the collection site, would be deleted because the proposed rule would address alcohol testing in Subpart E [Collecting Specimens for Testing]. These organizational changes to the current paragraph would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.153(c) would amend the first sentence of current Section 2.7(k) in Appendix A to Part 26, which restricts HHS-certified laboratories from subcontracting unless authorized by the licensee. The proposed rule would extend this restriction to subcontracting for specimen validity testing for consistency with the addition of requirements to perform validity testing to the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The second sentence of current Section 2.7(k) would be deleted from the proposed paragraph for several reasons: First, the requirement to have the capability to test for marijuana, cocaine, opiates, phencyclidine, and amphetamines would be deleted because it is redundant with proposed § 26.31(d)(1). The requirement to be capable of testing whole blood would be deleted because the proposed rule would no longer permit donors to request confirmatory alcohol testing of blood for the reasons discussed with respect to proposed § 26.83(a). Finally, the requirement for laboratories to be capable of conducting GC/MS testing would be eliminated because HHS-certified laboratories would be permitted to use other methods of confirmatory testing, consistent with related revisions to the HHS Guidelines.

Proposed § 26.153(d) would amend current Section 4.1(b) in Appendix A to Part 26, which requires licensees and C/Vs to use only HHS-certified laboratories who agree to follow the same rigorous testing, quality control, and chain-of-custody procedures when testing for more stringent cutoff levels, additional drugs to those for which testing is required under Part 26, and blood. The proposed paragraph would eliminate reference to testing for blood because the proposed rule would no longer permit donors to request confirmatory alcohol testing of blood for the reasons discussed with respect to proposed § 26.83(a).

Proposed § 26.153(e) would amend the third sentence of current Section 2.7(m) in Appendix A to Part 26, which requires licensees to conduct an inspection and evaluation of a laboratory's drug testing operations before using the laboratory's services. Some licensees have incorrectly interpreted the current regulation as requiring licensee employees to perform the pre-award inspection and evaluation. In many cases, however, appropriately qualified licensee employees may not be available to perform the inspection and evaluation, and the use of contracted experts may be necessary to achieve the NRC's intent. The proposed paragraph would revise the current requirement to indicate that licensees and other entities would be responsible ''to ensure'' that the inspection and evaluation is performed, in order to clearly indicate that the use of expert contractors is acceptable. In addition, the proposed rule would clarify that the pre-award inspection and evaluation must be performed by qualified individuals.

Proposed § 26.153(e) also would permit a licensee or other entity to begin using the services of another HHS-certified laboratory immediately, without a pre-award evaluation and inspection, in the event that the licensee's or other entity's primary laboratory loses its certification. To be considered acceptable, the proposed rule would require that the replacement laboratory must be in use by another Part 26 program. The proposed rule would add this provision to ensure that testing can continue, in the event that the HHS-certified laboratory upon which a licensee or other entity relies loses its certification, as some licensees have experienced. Related requirements for auditing the replacement laboratory would be specified in proposed § 26.41(g)(5).

Proposed § 26.153(f) would be added to require that licensees' and other entities' contracts with HHS-certified laboratories must require the laboratories to implement the applicable requirements of this part. Because the NRC does not regulate HHS-certified laboratories, this revision would ensure that the Agency has a legal basis for requiring HHS-certified laboratories to comply with this part when conducting testing for licensees and other entities.

Proposed § 26.153(f)(1) would retain the requirement in current Section 2.7(l)(1) in Appendix A to Part 26, which states that HHS-certified laboratories must comply with applicable State licensor requirements. The proposed paragraph would replace the term, ''HHS-certified laboratories,'' with the term, ''laboratory facilities,'' to clarify that State requirements apply to laboratory facilities rather than to the HHS-certified laboratory as a corporate entity. The proposed clarification would be necessary because some HHS-certified laboratories are operated by large national corporations with facilities in several different States, and only the facilities in a specific State would be required to meet the requirements of that State. The proposed change would be made for clarity in the language of the proposed rule as well as consistency with the HHS Guidelines.

Proposed § 26.153(f)(2) would amend current Section 2.7(o)(5) in Appendix A to Part 26, which requires that HHS-certified laboratories must make available qualified personnel to testify in proceedings based on urinalysis results reported by the laboratory. Reference to licensee testing facilities would be moved to § 26.139(c) in proposed Subpart F [Licensee Testing Facilities] for organizational clarity. The requirement for qualified personnel to be available to testify in proceedings related to breath analysis results would be moved to proposed § 26.85(d) in proposed Subpart E [Collecting Specimens for Testing] for organizational clarity and because responsibility for testifying with respect to breath analysis results would reside with the licensee's or other entity's collection site personnel.

Proposed § 26.153(f)(3) would update current Section 3.1 in Appendix A to Part 26, which requires HHS-certified laboratories to protect donors' records. The current requirement for licensee testing facilities to protect donors' records would be subsumed within the second sentence of proposed § 26.37(a) for organizational clarity. The cross-reference to current § 26.29 would be updated to reference proposed § 26.39 [Protection of information].

Proposed § 26.153(f)(4) would update current Section 3.2 in Appendix A to Part 26. Specifically, the proposed rule would add a reference to Section 503 of Public Law 100–71 to document the basis for this requirement, which would be adapted from the HHS Guidelines. The proposed paragraph would add a requirement for a donor to have access to records relating to his or her validity test results for consistency with the addition of validity testing requirements to the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The

proposed paragraph would delete the current reference to records related to alcohol test results because HHS-certified laboratories would no longer be testing blood specimens for alcohol, as discussed with respect to proposed § 26.83(a).

Proposed § 26.153(f)(5) would be added to clarify that HHS-certified laboratories must avoid relationships with a licensee's or other entity's MRO(s) that may be construed as a potential conflict of interest. The proposed paragraph would respond to the experiences of other Federal agencies regarding apparent conflicts of interest involving laboratories and MROs. Although the NRC is not aware of any situations of this type in Part 26 programs, the integrity of the MRO function is sufficiently important that incorporating this requirement would be warranted to prevent potential conflict of interest concerns. The proposed paragraph would be consistent with the related provision in the HHS Guidelines.

Proposed § 26.153(f)(6) would amend the requirements in the first two sentences of current Section 2.7(m) in Appendix A to Part 26, which require HHS-certified laboratories to permit the NRC, licensees, and other entities to conduct inspections at any time, including unannounced inspections. The proposed rule would delete, for organizational clarity, the existing references to collection site services and licensee testing facilities, which would be covered under proposed § 26.221 [Inspections]. The proposed paragraph would also delete reference to confirmatory testing of blood specimens for alcohol because HHS-certified laboratories would no longer be testing blood specimens for alcohol, as discussed with respect to proposed § 26.83(a).

Proposed § 26.153(g) would require licensees and other entities to provide a memorandum for the record to the HHS-certified laboratories that they use to document why the licensee or other entity is using a non-Federal custody-and-control form. Under the HHS Guidelines, laboratories may reject any specimen that is submitted for testing with a non-Federal custody-and-control form unless the licensee or other entity provides a memorandum for the record. The proposed paragraph would be necessary to prevent licensee's and other entity's specimens from being rejected.

Section 26.155 Laboratory Personnel

Proposed § 26.155 [Laboratory personnel] would update current Section 2.5 in Appendix A to Part 26 to be consistent with revisions to the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines) published in the **Federal Register** on April 13, 2004 (69 FR 19643).

Proposed § 26.155(a) [Day-to-day management of the HHS-certified laboratory] would amend current Section 2.5(a)(1) in Appendix A to Part 26, which requires the HHS-certified laboratory to have a qualified individual to assume responsibility for day-to-day management of the HHS-certified laboratory. Specifically, the proposed paragraph would replace the term, ''qualified individual,'' with the term, ''responsible person,'' for consistency with terminology that other Federal agencies use to refer to this job role.

Proposed § 26.155(a) would retain the majority of Section 2.5(a)(2), which establishes qualification requirements for the responsible person. Proposed § 26.155(a)(1)(i)–(a)(1)(iv) would retain current Section 2.5(a)(2)(i)–(a)(2)(iv) in Appendix A to Part 26, with minor grammatical changes that would be consistent with similar changes to the related provisions in the HHS Guidelines.

Proposed § 26.155(a)(2) and (a)(3), which establish minimum day-to-day management responsibilities of the responsible person, would retain current Section 2.5(a)(4) and (a)(5) in Appendix A to Part 26.

Proposed § 26.155(a)(4) would amend current Section 2.5(a)(5) in Appendix A to Part 26, which relates to the responsible person's responsibility to maintain the laboratory's procedures manual. The proposed paragraph would eliminate the current requirement for the procedures to be maintained in a laboratory manual as unnecessarily restrictive. Laboratories would be permitted to use other means to maintain their procedures. The proposed paragraph would retain the current requirements in the second and third sentences of Section 2.5(a)(5) in Appendix A to Part 26, which require the responsible person to review, sign, and date the procedures when they are first placed in use, changed, or a new individual assumes responsibility for management of the laboratory, and maintain copies of them. The current cross-reference to Section 2.7(o) in Appendix A to Part 26 would be updated to reference proposed § 26.157 [Procedures], consistent with the organizational changes made to the rule.

Proposed § 26.155(a)(5) and (a)(6) would retain current Section 2.5(a)(6) and (a)(7) in Appendix A to Part 26, which define the responsible person's responsibilities with respect to maintaining a quality assurance program and taking remedial actions to maintain satisfactory laboratory operations.

Proposed § 26.155(b) [Certifying scientist] would amend current Section 2.5(b) in Appendix A to Part 26 to be consistent with changes made to the related requirement in the HHS Guidelines. Consistent with the HHS Guidelines, the proposed rule would provide more detailed requirements with respect to the individual who validates test results at the HHS-certified laboratory before they are transmitted to the licensee's or other entity's MRO. In proposed § 26.155(b)(1), a new job title, ''certifying scientist,'' would replace the term, ''qualified individual(s),'' in the first sentence of current Section 2.5(b) in Appendix A to Part 26 for consistency with a related change in the HHS Guidelines. Proposed § 26.155(b)(2) would specify the required qualifications of individuals who serve as certifying scientists. Proposed § 26.155(b)(3) would permit laboratories to use more than one certifying scientist with differing responsibilities.

Proposed § 26.155(c) [Day-to-day operations and supervision of analysts] would retain current Section 2.5(c) in Appendix A to Part 26. The proposed rule would make minor wording changes to the current paragraph to increase the consistency of the wording in this provision with that of the related provision in the HHS Guidelines.

Proposed § 26.155(d) [Other personnel] and (e) [Training] would retain current Section 2.5(d) and (e) in Appendix A to Part 26, respectively.

Proposed § 26.155(f) [Files] would amend current Section 2.5(f) in Appendix A to Part 26. The proposed revisions would be consistent with related requirements in the HHS Guidelines. The current requirement for records of tests for color blindness would be eliminated, consistent with a similar change to the HHS Guidelines. Tests for color blindness would no longer be necessary because current testing technologies provide means, other than color, for reading test results.

Section 26.157 Procedures

A new § 26.157 [Procedures] would reorganize and amend requirements for procedures, which are interspersed throughout current Appendix A to Part 26, including requirements contained in current Sections 2.2 and 2.7 in Appendix A to Part 26. The proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve organizational clarity by grouping

procedural requirements for HHS-certified laboratories in one section.

Proposed § 26.157(a) would make minor editorial changes to the first sentence of current Section 2.2 in Appendix A to Part 26, which requires licensee testing facilities and HHS-certified laboratories to have detailed procedures for conducting testing. The proposed rule would delete the current reference to blood samples because donors would no longer have the option to request blood testing for alcohol, as discussed with respect to proposed § 26.83(a). Reference to licensee testing facilities would be moved to proposed § 26.127(a) in Subpart F [Licensee Testing Facilities] for organizational clarity. The proposed rule would also delete reference to procedures for specimen collections, because procedural requirements for specimen collections would be relocated to proposed Subpart E [Collecting Specimens for Testing].

Proposed § 26.157(b) would combine and amend portions of the requirements in the first sentence of current Sections 2.4(d) and 2.7(a)(2) in Appendix A to Part 26 related to the content and implementation of specimen chain-of-custody procedures. The proposed paragraph would retain the portions of the current paragraphs that require HHS-certified laboratories to develop, implement, and maintain written chain-of-custody procedures to maintain control and accountability of specimens from receipt through completion of testing and reporting of results, during storage and shipping to another HHS-certified laboratory, and continuing until final disposition of the specimens. The current requirements related to licensee testing facilities would be moved to proposed § 26.127(b) in Subpart F [Licensee Testing Facilities] for organizational clarity. The proposed rule would also remove references to custody-and-control procedures for blood specimens because donors would no longer have the option to request blood testing for alcohol, as discussed with respect to proposed § 26.83(a).

Proposed § 26.157(c) would amend the portions of current Section 2.7(o)(1) in Appendix A to Part 26 that address the required content of procedures for HHS-certified laboratories. The proposed paragraph would retain the portions of the current provision that require laboratories to develop and maintain procedures to specify all of the elements of the testing process, including, but not limited to, the principles of each test and the preparation of reagents, standards, and controls. The proposed paragraph would present the required topics of the procedures in a list format in proposed § 26.157(c)(1)–(c)(12) to clarify that each topic stands on its own. The proposed paragraph would eliminate the current requirement for the procedures to be maintained in a laboratory manual, which is unnecessarily restrictive. HHS-certified laboratories would be permitted to use other means to maintain their procedures. For organizational clarity, two portions of the current provision would be moved to other subparts of the proposed rule that address related topics. Requirements for licensee testing facility procedures would be moved to § 26.127(c) in proposed Subpart F [Licensee Testing Facilities]. In addition, the proposed rule would move the last two sentences of current Section 2.7(o)(1), which specify records retention requirements, to § 26.215(b)(4) of proposed Subpart J [Recordkeeping and Reporting Requirements].

Proposed § 26.157(d) would amend current Section 2.7(o)(3)(iii) in Appendix A to Part 26, which requires procedures for the setup and normal operation of testing instruments; a schedule for checking critical operating characteristics for all instruments; tolerance limits for acceptable function checks; and instructions for major troubleshooting and repair. The proposed rule would make three changes to the current provision for organizational clarity. The proposed paragraph would present the required topics of the procedures in a list format in proposed § 26.157(d)(1)–(d)(3) to clarify that each topic stands on its own. The current requirement to maintain records of preventative maintenance would be relocated to proposed § 26.215(b)(10) in Subpart J [Recordkeeping and Reporting Requirements]. And, the current requirements that apply to licensee testing facilities would be moved to § 26.127(d) in proposed Subpart F [Licensee Testing Facilities].

Proposed § 26.157(e) would amend current Section 2.7(o)(4) in Appendix A to Part 26, which requires documented corrective actions if systems are out of acceptable limits or errors are detected. The requirements in the current paragraph that apply to licensee testing facilities would be moved to § 26.127(e) in proposed Subpart F [Licensee Testing Facilities] for organizational clarity.

Section 26.159 Assuring Specimen Security, Chain of Custody, and Preservation

Proposed § 26.159 [Assuring specimen security, chain of custody, and preservation] would be added to present in one section the requirements of the proposed rule that apply to HHS-certified laboratories with respect to the safeguarding of specimen identity, integrity, and security. The proposed organizational change would be made because requirements that address these topics are dispersed throughout the current rule and grouping them together in a single section would make them easier to locate.

Proposed § 26.159(a) would amend current Section 2.7(a)(1) in Appendix A to Part 26. Proposed § 26.159(a) would retain the first three sentences of current Section 2.7(a)(1) in Appendix A to Part 26, which require HHS-certified laboratories to be secure and accessible only to authorized personnel. For organizational clarity, the requirements that apply to licensee testing facilities would be moved to proposed § 26.129(a) in Subpart F [Licensee Testing Facilities], and the last sentence of the current paragraph, which establishes recordkeeping requirements, would be moved to § 26.215(b)(13) in proposed Subpart J [Recordkeeping and Reporting Requirements]. In addition, the last sentence of the proposed paragraph would be revised for increased clarity in the requirement and would expand the list of persons who would be authorized to have access to the laboratory to include representatives of the Secretary of the Department of Health and Human Services and emergency responders. This proposed change would be made for consistency with the related provision in the HHS Guidelines.

Proposed § 26.159(b) would amend current Section 2.7(b)(1) in Appendix A to Part 26, which establishes requirements for receiving specimens at the HHS-certified laboratory and assuring their integrity and identity. The proposed rule would retain the existing requirement for the HHS-certified laboratory to report evidence of tampering to licensees' or other entities' management within 24 hours of discovery, as well as the requirement for the laboratory to document any evidence of tampering on the specimen's custody-and-control form. The proposed rule would move the current requirements related to licensee testing facilities to § 26.129(b) in proposed Subpart F [Licensee Testing Facilities] for organizational clarity. Several requirements would also be added to the proposed paragraph.

The proposed paragraph would require licensee or other entity management personnel to ensure that an investigation is initiated if any indications of specimen tampering are identified, and take corrective actions if tampering is confirmed. The appropriate corrective actions would depend upon

the nature of the tampering identified as a result of the investigation. For example, if the investigation indicated that the tampering was an attempt to subvert the testing process and the persons involved were identified, licensee and other entity management personnel would impose the sanctions in proposed § 26.75(b) for a subversion attempt. The proposed paragraph would also require the licensee, other entity, or HHS-certified laboratory to correct any systematic weaknesses in specimen custody-and-control procedures that may be identified in the investigation, such as inadequate safeguarding of specimen shipping containers. The proposed rule would add this provision because some licensees have not investigated or taken corrective actions in response to indications of tampering with specimens under the current rule.

The proposed paragraph would also prohibit testing specimens if there is a reason to believe that the specimens have been altered in such a manner as to affect specimen identity and integrity. In these circumstances, the proposed rule would require the licensee or other entity to collect another specimen from the donors. Although the NRC is not aware of any instances in which such circumstances have arisen in Part 26 programs, the experience of other Federal agencies indicates such tampering is possible. Therefore, the proposed requirement would ensure that individuals would not be subject to sanctions for a non-negative test result from a specimen that may not have been theirs. The proposed change would meet Goal 7 of this rulemaking, which is to protect the due process rights of individuals who are subject to Part 26. The additional provision would also be consistent with the requirements of other Federal agencies.

Proposed § 26.159(c) would update and combine current Section 2.7(b)(2) with portions of current Sections 2.9(n) and 3.1 in Appendix A to Part 26, which establish requirements for chain-of-custody procedures for specimens and aliquots at licensee testing facilities and HHS-certified laboratories. The proposed rule would move the requirements in the current paragraphs that are related to licensee testing facilities to § 26.129(c) in proposed Subpart F [Licensee Testing Facilities] for organizational clarity. Proposed § 26.159(c) would also include the requirements in current Sections 2.9(n) and 3.1 in Appendix A to Part 26, which require the laboratory to maintain the original specimen and custody-and-control form in secure storage at the HHS-certified laboratory. The proposed changes would be made to reduce redundancies and improve the organization clarity of the rule.

Proposed § 26.159(d) and (e) would update the portions of current Section 2.7(a)(2) in Appendix A to Part 26 that establish requirements for HHS-certified laboratory personnel to maintain and document the chain of custody for specimens and aliquots, by replacing the current paragraph with two related provisions from the HHS Guidelines. Proposed paragraph (d) in this section would require the laboratory's internal custody-and-control form to allow for identification of the donor, and documentation of the testing process and transfers of custody of the specimen. The phrase, ''within the laboratory,'' would be added to proposed paragraph (e) to clarify that the requirement to document each instance of the handling and transfer of specimens applies to internal laboratory activities and does not apply to transfers involving couriers. The proposed rule would relocate the requirements in the current paragraph that are related to licensee testing facilities to § 26.129(d) and (e) in proposed Subpart G [Laboratories Certified by the Department of Health and Human Services] for organizational clarity.

Proposed § 26.159(f) and (g) would separate current Section 2.4(i) in Appendix A to Part 26 into two paragraphs, for the reasons discussed with respect to the similar provisions of proposed § 26.117(i) and (k) and § 26.129(g) and (h). The proposed paragraphs would repeat the requirements for packaging and shipping non-negative specimens that would be presented in proposed § 26.117(i) and (k) of Subpart E [Collecting specimens for testing] and § 26.129(g) and (h) in Subpart F [Licensee Testing Facilities], but apply them to packaging and shipping specimens from one HHS-certified laboratory to another. The bases for these requirements are discussed with respect to proposed § 26.117(i) and (k).

Proposed § 26.159(h) [Short-term refrigerated storage] would replace current Section 2.7(c) in Appendix A to Part 26, which establishes requirements for refrigerating urine specimens at the HHS-certified laboratory and licensee testing facility to protect them from degradation. The proposed rule would replace the current paragraph with the simplified language of the related provision in the HHS Guidelines. Requirements related to short-term refrigerated storage at licensee testing facilities would be moved to § 26.129(f) in proposed Subpart F [Licensee Testing Facilities] for organizational clarity.

Proposed § 26.159(i) [Long-term storage] would amend current Section 2.7(h) in Appendix A to Part 26, which establishes requirements for long-term frozen storage of positive urine specimens at HHS-certified laboratories and licensee testing facilities. Requirements related to long-term storage of specimens by licensee testing facilities would be moved to proposed § 26.135(c) in Subpart F [Licensee Testing Facilities] for organizational clarity. The proposed paragraph would add requirements for storing specimens that yield non-negative validity test results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The reference to ''administrative or disciplinary proceedings'' in the first sentence of the current paragraph would be eliminated because there are other circumstances in which it may be necessary to have a specimen available for retesting, including, but not limited to, retesting an aliquot of an invalid specimen at a second HHS-certified laboratory under proposed § 26.161(g) [Additional testing by a second laboratory]. The proposed rule would also update the terminology used in the current paragraph by adding a reference to ''Bottle B'' of a split specimen and replacing the term, ''positive,'' with the term, ''non-negative,'' to be consistent with the new terminology adopted throughout the proposed rule. As discussed with respect to proposed § 26.5 [Definitions], these proposed changes in terminology would be made to improve clarity in the language of the proposed rule.

Proposed § 26.159(j) would be added to incorporate related changes to the HHS Guidelines. The proposed paragraph would permit the HHS-certified laboratory to discard negative specimens. The proposed paragraph also would permit laboratories to pool specimens that are certified to be negative for drugs and drug metabolites and valid, as well as use them as quality control samples, as permitted under the HHS Guidelines.

Section 26.161 Cutoff Levels for Validity Testing

A new § 26.161 [Cutoff levels for validity testing] would be added to establish maximum cutoff levels and methods for conducting specimen validity testing at HHS-certified laboratories, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed rule would incorporate these

requirements from the HHS Guidelines as revised on April 13, 2004 (69 FR 19644) to meet, in part, Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.161(a) [Validity test results] would be added to specify that laboratories must conduct initial and confirmatory validity testing using two different aliquots of a urine specimen.

Proposed § 26.161(b) [Initial validity testing] would be added to establish requirements and cutoff levels for initial validity tests to be performed at HHS-certified laboratories.

Proposed § 26.161(b)(1)–(b)(6) would establish requirements for validity tests that HHS-certified laboratories must conduct on a primary specimen, which would be either a single specimen submitted by an FFD program that does not follow split specimen procedures, or the specimen contained in Bottle A of a split specimen. For initial validity tests of each specimen, HHS-certified laboratories would determine the creatinine concentration of each specimen in proposed § 26.161(b)(1)(i). If the creatinine concentration is less than 20 mg/dL, the laboratory would determine the specimen's specific gravity in proposed § 26.161(b)(1)(ii). Proposed § 26.161(b)(1)(iii) would require the laboratory to determine each specimen's pH. Proposed § 26.161(b)(1)(iv) would require the laboratory to test the specimen for the presence of oxidizing adulterants, and proposed § 26.161(b)(1)(v) would require additional validity testing, depending upon the characteristics of the specimen.

Proposed § 26.161(b)(2)(i)–(b)(2)(ix) would establish the criteria for determining whether a specimen must be subject to confirmatory validity testing.

Proposed § 26.161(c) [Results indicating an adulterated specimen] would be added to establish criteria for HHS-certified laboratories to apply in determining whether to report to a licensee's or other entity's MRO that a specimen is adulterated. Proposed § 26.161(c)(1)–(c)(7) would specify results from initial and confirmatory validity testing that would indicate that a specimen is adulterated. The proposed paragraphs would also specify the appropriate testing devices and instruments to be used for initial and confirmatory validity tests. In general, the proposed paragraphs would require the HHS-certified laboratory to report to the MRO that a urine specimen is adulterated if it meets any one of the following criteria: (1) It is confirmed to contain a substance that should not be present at all in normal human urine; (2) it is confirmed to contain a substance which, although it could be present in normal human urine, is found to be at a concentration that appears to be completely inconsistent with human physiology; or (3) it presents an acid/base balance (pH) that appears to be inconsistent with human life. The proposed paragraphs would address several substances that some donors have used to try to defeat drug tests through ''in vitro'' contamination (*i.e.*, adding the substance to a urine specimen). These adulterants include substances that create a urine pH inconsistent with human life, oxidizing adulterants, chromium (VI), halogens, glutaraldehyde, pyridine, and surfactants. These substances, when either placed into an already voided urine or used in place of a urine specimen, generally either attempt to defeat the chemistry of the test or destroy a drug that is present. The NRC recognizes that this list will be updated and/or modified as new substances and formulas are introduced, and as the HHS-certified laboratories develop methods to detect them. Proposed § 26.131(c)(8) would recognize that new adulterants will be found and, therefore, would require HHS-certified laboratories to use appropriate testing methods when conducting initial and confirmatory testing for new adulterants for which cutoff levels and criteria have not yet been established.

Proposed § 26.161(d) [Results indicating a substituted specimen] and (e) [Results indicating a dilute specimen] would establish cutoff levels and criteria for a determination by the laboratory that a specimen has been substituted or is dilute, respectively. In proposed § 26.161(d), the HHS-certified laboratory would report to the MRO that a specimen is substituted if it contains less than 2 mg/dL of creatinine and the specific gravity is less than or equal to 1.001 or equal to or greater than 1.020. These low creatinine concentrations combined with the highly skewed specific gravity values indicate that the specimen is not human urine. In proposed § 26.161(e), the HHS-certified laboratory would be required to report to the MRO that a specimen is dilute if it contains 2–20 mg/dL of creatinine and has a specific gravity of less than or equal to 1.001 or equal to or greater than 1.020.

Proposed § 26.161(f)(1)–(f)(10) [Results indicating an invalid specimen] would be added to establish the criteria that HHS-certified laboratories would apply when determining that a specimen is invalid. In 1998, HHS established criteria for what were termed ''unsuitable'' specimens (Program Document 35, September 28, 1998). An unsuitable specimen was defined as one that contained an interfering substance but the laboratory could not determine the nature of the substance with scientific certainty. In these circumstances, the laboratory could not achieve a ''valid'' test result. The HHS recognized that in some cases, an interfering substance could be a legitimately ingested medication (some non-steroidal anti-inflammatories have been known to interfere with the chemistry of some of the initial tests). However, it was also recognized that many of these problem specimens actually contained an adulterant which the laboratory could not specifically identify with scientific certainty (the requirement for reporting a specimen as adulterated). Therefore, the HHS adopted the term, ''invalid specimen,'' to mean that the laboratory has determined that valid test results cannot be obtained from a specimen or an unknown substance interfered with the confirmatory test. The proposed rule would adopt the term, ''invalid specimen,'' with the same meaning.

Proposed § 26.161(g) [Additional testing by a second laboratory] would be added to address circumstances in which an HHS-certified laboratory suspects that a specimen is adulterated but cannot identify the adulterant. The proposed paragraph would permit the laboratory to transfer the specimen to a second HHS-certified laboratory for additional testing, if the first HHS-certified laboratory cannot identify a possible adulterant in the specimen using their standard testing technologies and the licensee's or other entity's MRO concurs with the additional testing. Personnel at the first HHS-certified laboratory would consult with the licensee's or other entity's MRO to determine whether to transfer the specimen to a second laboratory for additional testing.

Proposed § 26.161(h) [More stringent validity test cutoff levels are prohibited] would be added to prohibit licensees and other entities from requiring an HHS-certified laboratory to apply validity testing cutoff levels and criteria that are more stringent than those specified in this proposed section. Because validity testing is complex and the methods for testing are relatively new, the proposed rule would not permit an FFD program to establish more stringent cutoff levels for validity testing. The proposed prohibition would be necessary to decrease the risk of obtaining false non-negative test results and ensure that donors are not subject

to sanctions on the basis of inaccurate test results.

Section 26.163 Cutoff Levels for Drugs and Drug Metabolites

Proposed § 26.163 [Cutoff levels for drugs and drug metabolites] would group together in one section, for organizational clarity, the proposed requirements for conducting initial and confirmatory tests for drugs and drug metabolites at HHS-certified laboratories. The proposed section would also update requirements related to cutoff levels for drugs and drug metabolites in the current rule to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.163(a) [Initial drug testing] would amend current Section 2.7(e) in Appendix A to Part 26. When determining whether to report to the MRO that a specimen is positive for drug(s) or drug metabolite(s), proposed § 26.163(a)(1) would require HHS-certified laboratories to apply the same cutoff levels that licensee testing facilities would be required to use in proposed § 26.133 [Cutoff levels for drugs and drug metabolites], except if the FFD program specifies more stringent cutoff levels or the specimen is dilute, as discussed further with respect to proposed § 26.163(a)(2). The proposed paragraph would reiterate the current permission for licensees and other entities to establish lower cutoff levels. In addition, proposed § 26.163(a)(1) would decrease the initial test cutoff level for marijuana metabolites from 100 nanograms (ng) per milliliter (mL) to 50 ng/mL and increase the initial test cutoff level for opiate metabolites from 300 ng/mL to 2,000 ng/mL for the reasons discussed with respect to proposed § 26.133. The proposed changes would be consistent with the HHS cutoff levels for the same substances.

Proposed § 26.163(a)(2) would be added to establish requirements and criteria for the initial drug testing of any specimen that confirmatory validity testing indicates is dilute. Although there are many legitimate reasons that a donor may provide a urine specimen that is dilute, dilution is also a method used to subvert the testing process. Dilution of a specimen decreases the concentration of any drugs or drug metabolites in the specimen. Dilution may decrease the concentration sufficiently that applying the cutoff levels specified in this part, or a licensee's or other entity's more stringent cutoff levels, would provide false negative drug test results. Therefore, the proposed rule would add special testing procedures and criteria for determining which dilute specimens must be subject to confirmatory drug testing.

The proposed paragraph would require HHS-certified laboratories to conduct initial drug testing of dilute specimens using FDA-approved analytical kits that have the lowest concentration levels available for the initial testing technologies used. If responses from the dilute specimen on the initial drug test are within 50 percent of the established cutoff level for the drug or drug metabolite, the proposed rule would require the HHS-certified laboratory to report this result to the licensee's or other entity's MRO. If the FFD program's policy specifies this requirement, the proposed rule would permit the MRO to direct the HHS-certified laboratory to test the specimen at the confirmatory assay's LOD for that drug or drug class and report the results to the MRO. This special processing of dilute specimens would increase the likelihood that any drugs and drug metabolites in the specimen would be detected. Therefore, this proposed requirement would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by increasing the likelihood that testing of dilute specimens would reveal drug use, if the donor had engaged in substance abuse.

As discussed with respect to proposed § 26.133 [Cutoff levels for drugs and drug metabolites], the proposed rule would eliminate the requirement in the last sentence of current Section 2.7(e)(1) for HHS-certified laboratories to report drug test results for both the cutoff levels in the rule and any more stringent cutoff levels that the licensee or other entity may establish. The basis for the current requirement to report test results for the cutoff levels specified in this part, when the licensee is using more stringent cutoff levels, was a means by which the NRC monitored implementation of the permission to use more stringent cutoff levels. The proposed rule would eliminate this requirement, because proposed § 26.31(d)(3)(iii)(C) would require a qualified forensic toxicologist to certify the scientific and technical validity of any testing at lower cutoff levels. Therefore, the current reporting requirement is no longer needed to assure laboratory performance in this area. Eliminating this requirement would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

The proposed rule would also eliminate current Section 2.7(e)(2), which states that the list of substances and cutoff levels contained in Appendix A to Part 26 are subject to change by the NRC. At the time the current rule was published, the NRC expected to be able to amend the list of substances and cutoff levels in Appendix A to Part 26 without additional rulemaking. However, the NRC has determined that rulemaking is required to make such changes. Therefore, the proposed rule would delete this paragraph because it is unnecessary.

The proposed rule would replace current Section 2.7(f) in Appendix A to Part 26, which establishes cutoff levels and requirements related to confirmatory testing for drugs and drug metabolites at the HHS-certified laboratory, with proposed § 26.163(b) [Confirmatory drug testing]. The proposed rule would also make a number of changes to the current paragraph.

The proposed rule would move current Section 2.7(f)(1) in Appendix A to Part 26 to proposed § 26.169(b). Current Section 2.7(f)(1) requires the HHS-certified laboratory to report to the MRO that test results are negative for any specimens that yield negative test results when they are subjected to confirmatory testing. This requirement would be moved to proposed § 26.169(b) for organizational clarity because proposed § 26.169 [Reporting results] addresses the topic of reporting test results by the HHS-certified laboratory to the MRO.

The proposed rule would also eliminate the requirement in current Section 2.7(f)(1) in Appendix A to Part 26 that the laboratory must conduct confirmatory testing using both the maximum cutoff values established in Part 26 as well as any more stringent cutoff levels adopted by the licensee's or other entity's FFD program. The current requirement to conduct testing for the cutoff levels specified in this part, when the licensee is using more stringent cutoff levels, was a means by which the NRC monitored implementation of the permission to use more stringent cutoff levels. The proposed rule would eliminate this requirement, because proposed § 26.31(d)(3)(iii)(C) would require a qualified forensic toxicologist to certify the scientific and technical validity of any testing at lower cutoff levels. Therefore, the requirement to test at both cutoff levels would no longer be needed to assure laboratory performance in this area.

For organizational clarity, the requirement in the first sentence of current Section 2.7(f)(2) in Appendix A

to Part 26 that the laboratory must use GC/MS techniques for confirmatory testing would be moved to proposed § 26.167(e)(1) [Quality control requirements for performing confirmatory drug tests], which would establish quality control requirements for conducting confirmatory drug tests.

The proposed rule would eliminate current Section 2.7(f)(3) in Appendix A to Part 26, which requires HHS-certified laboratories to use GC analysis of blood specimens in testing for alcohol, and the confirmatory alcohol cutoff level in current Section 2.7(f)(1) in Appendix A to Part 26. These provisions would be eliminated because the proposed rule would no longer permit donors to request confirmatory testing of a blood specimen for alcohol, as discussed with respect to proposed § 26.83(a).

In addition, the proposed rule would eliminate current Section 2.7(f)(4) in Appendix A to Part 26 for the same reasons discussed with respect to current Section 2.7(e)(2) in Appendix A to Part 26.

Proposed § 26.163(b)(1) would amend several of the cutoff levels in current Section 2.7(f)(1) in Appendix A to Part 26 that the HHS-certified laboratory uses to determine that a confirmatory drug test result is positive. The proposed rule would increase the confirmatory test cutoff levels for morphine and codeine to 2,000 ng/mL. This proposed change in the cutoff levels for opiate metabolites would substantially reduce the number of positive opiate test results that are reported to MROs by HHS-certified laboratories that MROs ultimately verify as negative and would be consistent with the opiate cutoff levels contained in the HHS Guidelines.

Proposed § 26.163(b)(1) would also amend two of the testing procedures in current Section 2.7(f) in Appendix A to Part 26. The proposed rule would amend Section 2.7(f)(5) in Appendix A to Part 26, which requires the laboratory to test for 6-acetylmorphine (6–AM) if a specimen tests positive for opiates on the initial drug test. The proposed rule would require the HHS-certified laboratory to test for 6–AM, if test results for morphine are at or above the 2,000 ng/mL opiate cutoff levels, and establish a cutoff level of 10 ng/mL for determining that a specimen is positive for 6–AM. In addition, proposed § 26.163(b)(1) would add a requirement that a specimen must contain amphetamine at a concentration equal to or greater than 200 ng/mL in order for the HHS-certified laboratory to report to the MRO that the specimen has yielded a positive test result for methamphetamine. These proposed changes would be made for consistency with the related provisions in the HHS Guidelines.

Proposed § 26.163(b)(1) would update the terminology used in current Section 2.7(f)(1) in Appendix A to Part 26. As discussed with respect to proposed § 26.5 [Definitions], the proposed paragraph would replace the term, ''presumptive positive,'' with the phrase, ''positive on an initial drug test,'' to increase clarity in the language of the rule.

Proposed § 26.163(b)(2) would amend the second sentence of current Section 2.7(f) in Appendix A to Part 26, which requires the HHS-certified laboratory to document drug and drug metabolite concentrations that exceed the linear region of the standard curve in the laboratory record. The proposed rule would replace the current sentence with a new paragraph that incorporates the related provision from the HHS Guidelines. The HHS Guidelines permit the laboratory to dilute an aliquot of the specimen to obtain an accurate quantitative result when the concentration is above the upper limit of the linear range. This proposed change would be made to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Section 26.165 Testing Split Specimens and Retesting Single Specimens

A new § 26.165 [Split specimens] would reorganize and amend the requirements currently found in § 26.24(f), and Section 2.7(i) and (j) in Appendix A to Part 26 that are related to testing split specimens and retesting specimens at HHS-certified laboratories. These requirements would be presented together in a single section to make them easier to locate in the proposed rule for organizational clarity. The proposed section would also add several new requirements.

Proposed § 26.165(a) [Split specimens] would combine and amend current § 26.24(f) and Section 2.7(j) in Appendix A to Part 26, which establish requirements for HHS-certified laboratories when testing split specimens. The proposed paragraph would use the terms, ''Bottle A'' and ''Bottle B,'' to refer to the primary and split specimens, respectively, for consistency with the updated terminology used throughout the proposed rule. The proposed paragraph would also require specimen validity testing, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.165(a)(1) would retain the portions of current Section 2.7(j) in Appendix A to Part 26 that require the HHS-certified laboratory to analyze the primary specimen of a split specimen. The current requirements that relate to licensee testing facilities would be moved to § 26.135 [Split specimens] in proposed Subpart F [Licensee Testing Facilities] for organizational clarity. The proposed paragraph would retain the requirement that the primary specimen (Bottle A) must be subject to initial testing by the HHS-certified laboratory, and confirmatory testing, if the specimen yields non-negative results from initial testing. The proposed paragraph would specify that the HHS-certified laboratory must conduct validity tests on the specimen contained in Bottle A, as well as drug tests, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.165(a)(2) would retain the portion of the second sentence of current § 26.24(f) that requires the HHS-certified laboratory to perform initial and confirmatory tests, if required, on the specimen in Bottle A if any initial test results from a licensee testing facility are non-negative. This requirement would be moved to the proposed section for organizational clarity. In addition, the term, ''positive,'' in the current sentence would be replaced with the term, ''non-negative,'' to indicate that the HHS-certified laboratory must conduct confirmatory testing of any specimens that yield non-negative initial validity or drug test results at the licensee testing facility, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.165(a)(3) would retain the permission in the second sentence of current Section 2.7(j) in Appendix A to Part 26 for licensees and other entities to retain custody of the split specimen in Bottle B or forward it with Bottle A to the HHS-certified laboratory for storage until testing of Bottle A is completed. The proposed paragraph would also retain the current permission for the specimen in Bottle B to be discarded if test results from the HHS-certified laboratory are negative.

Proposed § 26.165(a)(4) would amend the requirements in current Section 2.7(j) in Appendix A to Part 26, as they relate to donor requests to test the specimen in Bottle B. The proposed

paragraph would add non-negative validity test results as a basis for a donor request for testing the specimen in Bottle B, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed paragraph would also add a requirement that the donor must request testing of the Bottle B specimen within 3 business days after notification by the MRO that the specimen in Bottle A has yielded non-negative test results. Since 1994, the HHS Guidelines have allowed up to 72 hours for a donor to make this request, so the proposed change would increase the consistency of Part 26 with the HHS Guidelines.

The proposed paragraph would also require the donor to provide written permission to the licensee or other entity for testing of the specimen contained in Bottle B and clarify that only the donor may authorize testing of Bottle B. At the public meetings discussed in Section V, stakeholders indicated that the proposed requirement for a written request from donors would impose a substantial logistical burden on donors who may not be working on site when contacted by the MRO. However, the NRC believes that the proposed requirement is necessary to ensure that the donor's right to privacy and control of the specimen is protected, consistent with Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.165(a)(5) would require the HHS-certified laboratory to forward Bottle B to a second HHS-certified laboratory for testing within one business day of the donor's request for testing. The proposed paragraph would eliminate the requirement in the fourth sentence of current Section 2.7(j) in Appendix A to Part 26, which requires that the split specimen must be forwarded to another HHS-certified laboratory for testing on the same day of the donor request. The proposed change would respond to stakeholder feedback during the public meetings discussed in Section V. The stakeholders reported that implementing the same-day requirement has often been difficult for a number of reasons, including, for example, communication delays among donors, MROs, the HHS-certified laboratories, and FFD program personnel, particularly on weekends and holidays, and the time required to identify a second laboratory with the appropriate capability to test the split specimen, depending upon the nature of the non-negative test result. The proposed change would alleviate some of these types of logistical difficulties (*e.g.*, logistical problems associated with weekends and holidays) while continuing to provide the donor with timely test results. Therefore, this proposed change would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

Proposed § 26.165(a)(6) would retain the last sentence of current Section 2.7(j) in Appendix A to Part 26, which requires the second HHS-certified laboratory to provide quantitative test results from Bottle B to the MRO, who would provide them to the donor. The proposed paragraph would adopt the simpler language from the related provision in the HHS Guidelines, consistent with Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

Proposed § 26.165(b) [Donor request to MRO for a retest of a single specimen] would be added to permit donors to request retesting of an aliquot from a single specimen, if the FFD program does not follow split specimen procedures. The proposed paragraph would assure that donors who are subject to a program that does not follow split specimen procedures have the right to request additional testing. The proposed change would be consistent with related provisions in the HHS Guidelines. However, in order to have sufficient urine to support retesting, the proposed paragraph would apply only if the donor had submitted a specimen of 30 mL or more. Specimens that the HHS-certified laboratory determines to be invalid would not be eligible for retesting because of the risk of damage to laboratory equipment that some invalid specimens may pose and because retesting the specimen would not provide useful information. The proposed procedures for requesting and conducting the retest of a single specimen would be consistent with those for requesting and conducting tests on the specimen in Bottle B of a split specimen.

Proposed § 26.165(c) [Retesting a specimen for drugs] would amend current Section 2.7(i) in Appendix A to Part 26, which specifies that retesting of a specimen is not subject to cutoff requirements. The proposed paragraph would update and expand current requirements for retesting a single specimen or Bottle B of a split specimen for drugs and drug metabolites to be consistent with the related provisions in the HHS Guidelines, as follows:

Proposed § 26.165(c)(1) would be added to require the second HHS-certified laboratory to use the laboratory's standard confirmatory test for the drug or drug metabolite for which the specimen tested positive at the first laboratory. Initial tests, and tests for other drugs or drug metabolites, would not be performed, consistent with the related requirements in the HHS Guidelines.

Proposed § 26.165(c)(2) would amend current Section 2.7(i) in Appendix A to Part 26, which specifies that retesting of a specimen is not subject to cutoff requirements. The proposed paragraph would retain the requirement for the second HHS-certified laboratory to provide data sufficient to confirm the presence of the drug(s) or drug metabolite(s) and add permission to test the specimen down to the assay's LOD. Adding permission to test down to the assay's LOD would be consistent with the related requirement in the HHS Guidelines and would ensure that the second laboratory's testing is as sensitive to the presence of the drug(s) or drug metabolite(s) as scientifically and legally defensible.

Proposed § 26.165(c)(3) would be added to require the second laboratory to attempt to determine the reason if retesting fails to confirm the presence of the drug(s) or drug metabolite(s) that was identified by the first HHS-certified laboratory. The proposed paragraph would require the second laboratory to conduct specimen validity testing if the second laboratory fails to reconfirm the first laboratory's findings, consistent with the related requirements in the HHS Guidelines.

Proposed § 26.165(c)(4) would retain the requirement in the last sentence of current Section 2.7(j) in Appendix A to Part 26 that requires the second laboratory to report the test results to the MRO. The proposed rule would extend this requirement to retesting of a single specimen, consistent with the explicit permission added in proposed § 26.165(b) for a donor to request retesting of a single specimen, if the FFD program does not follow split specimen procedures. The proposed requirement would be consistent with the related requirements in the HHS Guidelines.

Proposed § 26.165(d) [Retesting a specimen for adulterants] and (e) [Retesting a specimen for substitution] would be added to incorporate related requirements in the HHS Guidelines for performing retests for adulterants and substituted specimens at a second HHS-certified laboratory. Retesting for adulterants would be limited to conducting confirmatory testing only for the adulterant(s) identified by the first laboratory. Retesting for specimen substitution would be limited to

conducting confirmatory testing only for creatinine and specific gravity. These proposed limitations would be consistent with limitations on retesting specimens for drugs and drug metabolites.

Proposed § 26.165(f) [Management actions and sanctions] would be added to specify the actions that licensees and other entities must take when a donor requests a retest of a single specimen or testing of Bottle B of a split specimen. The proposed paragraph would respond to stakeholder comments at the public meetings discussed in Section V. The stakeholders noted that the current rule does not address required management actions when an individual has had a confirmed non-negative test result and requests a retest of a single specimen or Bottle B of a split specimen. Therefore, the proposed paragraph would be added to establish such requirements.

Proposed § 26.165(f)(1) would be added to address circumstances in which the MRO has confirmed a non-negative test result from the HHS-certified laboratory as a violation of the licensee's or other entity's FFD policy and the donor requests a retest of a single specimen or testing of the specimen in Bottle B. The proposed paragraph would require the licensee or other entity to take the same actions in response to the confirmed non-negative test result(s) from the first HHS-certified laboratory as the actions that licensees and other entities would be permitted to take under proposed § 26.75(i) in response to a positive drug test result for marijuana or cocaine from initial testing at a licensee testing facility. That is, proposed § 26.165(f) would require the licensee or other entity to administratively withdraw the donor's authorization until the test results from the second HHS-certified laboratory have been reported to and reviewed by the MRO. If the test results from the second laboratory confirm any non-negative test results from the first HHS-certified laboratory, the proposed paragraph would require the licensee or other entity to impose the appropriate sanctions that are specified in proposed Subpart D [Management actions and sanctions] for the non-negative test results that were confirmed by the second laboratory. If the test results from the second laboratory do not confirm any non-negative test results, the proposed rule would (1) prohibit the licensee or other entity from imposing any sanctions on the individual; (2) require the licensee or other entity to eliminate any records of the first confirmed non-negative test results; and (3) require the licensee or other entity to inform the donor, in writing, that the records have been expunged and that he or she need not disclose the temporary administrative action to any other licensee or entity. These proposed requirements would protect public health and safety and the common defense and security by ensuring that an individual whose fitness for duty is questionable does not perform any duties or have the types of access that require the individual to be subject to this part, while protecting the donor's right to due process.

Proposed § 26.165(f)(2) would be added to address the unlikely circumstances in which a donor requests retesting of a single specimen or testing Bottle B of a split specimen, but the testing cannot be performed because the single specimen or Bottle B is no longer available due to causes that are outside of the donor's control. These causes could include, for example, an insufficient quantity of urine in the single specimen to permit retesting, either Bottle B or the original single specimen is lost in transit to the second HHS-certified laboratory, or Bottle B has been misplaced.

The proposed paragraph would require the MRO to cancel the original test result, prohibit the licensee or other entity from imposing any sanctions on the donor, and require the licensee or other entity to ensure that any records are expunged that could link the donor to the original non-negative test result and the administrative action required under proposed § 26.165(f)(1). The proposed paragraph would require the licensee or other entity to document that the test was performed and cancelled, if the original specimen was collected for random, for-cause, or post-event testing. However, the MRO would direct the licensee or other entity to collect another specimen from the donor as soon as reasonably practical, if the original specimen was collected for pre-access or followup testing. The proposed paragraph would not require a second collection for a random test because a second collection could not satisfy the requirements for random testing [*i.e.*, the donor would not have the same probability of being selected for testing as all other donors who are subject to the FFD program, as required under proposed § 26.31(c)(iv)]. The proposed rule also would not require a second collection when the original test was conducted for cause or post event because test results from a second collection could not accurately measure the presence of drugs or drug metabolites under the conditions that required the original collection due to the passage of time. The proposed paragraph would require a second collection as soon as reasonably practical for pre-access and followup testing because other provisions of the proposed regulation (see proposed Subpart C [Granting and Maintaining Authorization]) require negative test results in order for the licensee or other entity to grant or maintain the donor's authorization.

The last sentence of proposed § 26.165(f)(2) would require the licensee or other entity to impose the appropriate sanctions, as specified in proposed Subpart D [Management actions and sanctions], if the results of testing the specimen from a second collection are non-negative and confirmed by the MRO to be an FFD policy violation. However, the proposed rule would prohibit the licensee or other entity from considering the results of testing the original specimen when imposing sanctions because the donor was (inadvertently) denied his or her right to due process in this case.

The new requirements in proposed § 26.165(f) would be generally consistent with related requirements in the HHS Guidelines. The differences from the HHS Guidelines' requirements in the proposed rule would be variations in the terminology used to adapt the language for the NRC's purposes and the addition of cross-references to other portions of the proposed rule.

Section 26.167 Quality Assurance and Quality Control

Proposed § 26.167 [Quality assurance and quality control] would update current Section 2.8 in Appendix A to Part 26, which establishes quality assurance and quality control requirements for drug testing at HHS-certified laboratories. The proposed section would provide more detailed requirements for the quality assurance and quality control programs of HHS-certified laboratories for consistency with related provisions in the HHS Guidelines, and add new requirements for validity testing, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.167(a) [Quality assurance program] would amend and combine current Section 2.8(a) and the last two sentences of Section 2.8(d) in Appendix A to Part 26, which require HHS-certified laboratories and licensee testing facilities to have quality assurance programs. For increased clarity in the language of the rule, the proposed rule would replace the term, ''specimen acquisition,'' with the term, ''specimen accessioning,'' in the first

sentence of current Section 2.8(a), which is the more accurate term. The proposed rule would also add a requirement for the quality assurance program to encompass the certification of calibrators and controls to ensure that calibrators and controls are accurate, which would be consistent with the related provision in the HHS Guidelines.

In addition, the proposed rule would move to proposed § 26.167(a) and amend the requirements in the last two sentences of current Section 2.8(d) in Appendix A to Part 26, which require that the linearity and precision of testing methods used must be periodically documented as well as the procedures to ensure that carryover does not contaminate a donor's specimen. The proposed rule would update these requirements for consistency with the HHS Guidelines and require that (1) the performance characteristics (*e.g.*, accuracy, precision, LOD, limit of quantitation (LOQ), specificity) for each test must be validated and documented; (2) validation of procedures must document that carryover does not affect the donor's specimen results, and (3) the laboratory must periodically re-verify the analytical procedures. These requirements would be moved to proposed § 26.167(a) for organizational clarity because they are aspects of the laboratory's quality assurance program.

The requirements in current Section 2.8(a) in Appendix A to Part 26 that apply to licensee testing facilities would be moved to § 26.137(a) [Quality assurance program] in proposed Subpart F [Licensee Testing Facilities] for organizational clarity. The second sentence of current 2.8(a) would be retained in proposed § 26.167(a).

The quality control requirements for initial tests at licensee testing facilities in current Section 2.8(b) in Appendix A to Part 26 would be relocated to § 26.137 [Quality assurance and quality control] in proposed Subpart F [Licensee Testing Facilities]. The proposed change would be made for organizational clarity.

Proposed § 26.167(b) [Calibrators and controls required] would retain the portions of current Section 2.8(c) and (d) in Appendix A to Part 26 that require HHS-certified laboratories to use appropriate calibrators and controls for initial and confirmatory drug testing. The proposed rule would add a requirement to include appropriate calibrators and controls for initial and confirmatory validity testing, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The more detailed requirements for calibrators and controls in current Section 2.8(c) and (d) would be amended and presented in this section of the proposed rule in separate paragraphs that address each type of test to be performed by the HHS-certified laboratory. The proposed changes would be made for increased consistency with the HHS Guidelines and to improve the organizational clarity of the proposed rule.

Proposed § 26.167(c) [Quality control requirements for performing initial and confirmatory validity tests] would be added to establish quality control requirements for performing initial and confirmatory validity tests at an HHS-certified laboratory. The quality control requirements for validity tests in this proposed paragraph would incorporate the related provisions of the HHS Guidelines.

Proposed § 26.167(c)(1) [Requirements for performing creatinine tests] would be added to require HHS-certified laboratories to measure creatinine concentration to 1 decimal place on initial and confirmatory creatinine tests and establish requirements for the quality control samples to be used in initial and confirmatory tests for creatinine concentration.

Proposed § 26.167(c)(2) [Requirements for performing specific gravity tests] would be added to establish the required characteristics of the refractometers used by HHS-certified laboratories to measure specific gravity and the characteristics of the quality control samples to be used for initial and confirmatory tests for a specimen's specific gravity.

Proposed § 26.167(c)(3) [Requirements for performing pH tests] would be added to establish quality control requirements for performing initial and confirmatory pH tests. Proposed § 26.167(c)(3)(i)–(c)(3)(v) would specify the required calibrators and controls for pH testing, based upon the type of testing instrument used and whether a pH validity screening test has been performed.

The proposed rule would add three additional paragraphs related to quality control of initial and confirmatory validity testing: proposed § 26.167(c)(4) [Requirements for performing oxidizing adulterant tests], proposed § 26.167(c)(5) [Requirements for performing nitrite tests], and proposed § 26.167(c)(6) [Requirements for performing ''other'' adulterant tests]. The proposed paragraphs would establish quality control requirements for performing initial and confirmatory tests for oxidizing adulterants, among which nitrites are one example, and for ''other'' adulterants.

Proposed § 26.167(d) [Quality control requirements for initial drug tests] would amend and combine portions of current Sections 2.7(d) and (e)(1), and 2.8(c) in Appendix A to Part 26, which establish quality control requirements for performing initial tests for drugs and drug metabolites at HHS-certified laboratories. The proposed paragraph would group together the current requirements that are dispersed throughout the rule to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule. In addition, the proposed rule would amend a number of the current requirements, as follows:

Proposed § 26.167(d)(1) would amend the first sentence of current Section 2.7(e)(1) in Appendix A to Part 26 but retain the intent of the current provision as it applies to HHS-certified laboratories. The current and proposed paragraphs require laboratories to use only immunoassay tests that meet the requirements of the Food and Drug Administration for commercial distribution. The requirements in the current paragraph related to initial drug testing at licensee testing facilities would be moved to § 26.137(e)(1) of proposed Subpart F [Licensee Testing Facilities] to improve organizational clarity in the rule.

Proposed § 26.167(d)(2) would permit HHS-certified laboratories to conduct multiple tests of a single specimen for the same drug or drug class. The requirements in this paragraph would be consistent with a similar provision in the HHS Guidelines and would be added to meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.167(d)(3)(i)–(d)(3)(vi) would update current Section 2.8(c) in Appendix A to Part 26, which requires HHS-certified laboratories to include quality control samples in each analytical run of specimens for initial drug testing. Proposed § 26.167(d)(3)(i)–(d)(3)(vi) would specify the number and characteristics of the quality control samples to be included in each analytical run of specimens. These proposed requirements would be the same as those contained in proposed § 26.137(e)(6) and (e)(7) for initial drug tests at licensee testing facilities and would be added for consistency with the related provisions in the HHS Guidelines.

Proposed § 26.167(e) [Quality control requirements for performing confirmatory drug tests] would update and combine portions of current Sections 2.7(f)(2) and 2.8(d) in

Appendix A to Part 26, which address quality control requirements for performing confirmatory drug tests. In general, the proposed changes to the current requirements would be made for organizational clarity in the proposed rule and to incorporate the related provisions in the HHS Guidelines.

Proposed § 26.167(e)(1) would amend current Section 2.7(f)(2) in Appendix A to Part 26, which requires that confirmatory drug tests must be performed using gas chromatography/mass spectrometry (GC/MS). The proposed paragraph would permit HHS-certified laboratories to use other techniques for confirmatory drug testing that the HHS Guidelines approve for use in Federal workplace drug testing programs.

Proposed § 26.167(e)(2)(i)–(e)(2)(iv) would amend the requirements for quality control samples in current Section 2.8(d) in Appendix A to Part 26. Proposed § 26.167(e)(2)(i) and (e)(2)(ii) would retain the current requirements for laboratories to include blank samples and samples that contain known standards in each analytical run. The proposed requirements would adopt the simpler language from the related provisions in the HHS Guidelines to improve clarity in the language of the rule. For consistency with the related requirements in the HHS Guidelines, the proposed paragraph would provide more detailed requirements for ''positive controls with the drug or metabolite at or near the threshold'' in current Section 2.8(d)(1) in Appendix A to Part 26. The proposed rule would require, in proposed § 26.167(e)(2)(iii), at least one control fortified with a drug or drug metabolite targeted at 25 percent above the cutoff and, in proposed § 26.167(e)(2)(iv), at least one calibrator or control that is targeted at or below 40 percent of the cutoff.

Proposed § 26.167(f) [Blind performance testing] would amend current Section 2.8(e) in Appendix A to Part 26, which establishes requirements for licensees and other entities to conduct blind performance testing of HHS-certified laboratories, as follows:

Proposed § 26.167(f)(1) would amend the portion of current Section 2.8(e)(2) in Appendix A to Part 26 that establishes the percentages and numbers of blind performance test samples that licensees and other entities must submit to the HHS-certified laboratory during the first 90 days of any initial contract with the HHS-certified laboratory. The proposed paragraph would decrease the percentage of blind performance test samples that licensees and other entities would submit to the HHS-certified laboratory during the initial 90-day period of any contract (not including rewritten or renewed contracts). Specifically, the proposed rule would reduce the percentage from 50 percent to 20 percent of the total number of specimens submitted in the 90-day period, up to a maximum of 100 blind samples, rather than a maximum of 500 samples as specified in the current rule. This proposed decrease in the blind performance testing rate would increase the consistency of Part 26 requirements with the related provisions in the HHS Guidelines. In addition, since the NRC published the current rule, the number and size of Federal agencies who conduct drug testing has substantially increased, and these agencies are also required to submit blind performance test samples under the HHS Guidelines. As a result, the burden on Part 26 programs to conduct performance tests of the HHS-certified laboratories may be reduced without affecting the likelihood that errors in testing will be detected.

The proposed rule would also add a requirement for licensees and other entities to submit a minimum of 30 blind performance test specimens in the 90-day period. This proposed minimum would be established to address Part 26 programs who submit only a small number of specimens to HHS-certified laboratories for testing each quarter. For example, for a very small program, 20 percent of the number of specimens submitted in the 90-day period could be less than one blind performance test sample. Establishing a minimum number of samples would provide assurance that the HHS-certified laboratories used by these Part 26 programs are providing accurate test results.

Proposed § 26.167(f)(2) would amend the portion of current Section 2.8(e)(2) in Appendix A to Part 26 that addresses ongoing blind performance testing after the first 90 days of an initial contract with an HHS-certified laboratory. The proposed rule would decrease the rate at which licensees and other entities must submit blind performance test samples to an HHS-certified laboratory in each quarter after the initial 90-day period from 10 percent in the current rule to 1 percent, or a total of 10 samples, whichever is greater. The proposed rule would also decrease the maximum number of samples to be submitted per quarter from 250 to 100 samples. The rationale for these proposed changes would be the same as discussed with respect to proposed § 26.167(f)(1).

Proposed § 26.167(f)(3) would decrease the proportion of spiked blind samples that licensees and other entities would submit each quarter from 20 percent in Section 2.8(e)(3) in Appendix A to Part 26 to 15 percent. The proposed rule would retain the current requirement that samples must be spiked with only the drugs that are included in the licensee's or other entity's panel of drugs. The proposed rule would add a requirement that the spiked samples must be spiked to between 60–80 percent of the initial cutoff levels used by the licensee or other entity to be consistent with related requirements in the HHS Guidelines. In addition, the proposed rule would add a requirement for licensees and other entities to submit samples that meet the criteria for adulteration, dilution, and substitution, in order to challenge the laboratory's validity testing. Licensees and other entities would be required to submit blind samples each quarter that are appropriately adulterated, diluted, or substituted, in the amount of 5 percent of the specimens submitted that quarter or at least 3 samples per quarter (one each that is adulterated, diluted, or substituted), whichever is greater. This proposed change would be made for consistency with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i), and would be necessary to challenge the accuracy of the HHS-certified laboratory's specimen validity testing.

Proposed § 26.167(f)(4) would retain current Section 2.8(e)(3) in Appendix A to Part 26, which requires that 80 percent of the blind samples submitted by the licensee or other entity each quarter to the HHS-certified laboratory must be ''blank'' (*i.e.*, certified to contain no drugs or drug metabolites).

Proposed § 26.167(f)(5) would be added to establish detailed requirements for the blind performance test samples that licensees and other entities must submit to the HHS-certified laboratories. The proposed rule would require the supplier of the blind samples to certify and provide an expiration date for each sample. Proposed § 26.167(f)(i) and (f)(ii) would specify the characteristics of the samples that licensees and other entities would be required to use to challenge the HHS-certified laboratory's drug and validity testing, respectively. The proposed quality control requirements would be necessary to ensure the effectiveness of the blind performance testing process and would incorporate the related requirements in the HHS Guidelines.

Proposed § 26.167(g) [Errors in testing] would amend current Section 2.8(e)(4)–(e)(6) in Appendix A to Part 26, which establishes requirements for licensees, other entities, and HHS-

certified laboratories related to unsatisfactory performance, including false positive and false negative test results, by the HHS-certified laboratory. The proposed paragraph would require the licensee or other entity to ensure that the HHS-certified laboratory investigates any conditions that may adversely reflect on the testing process. Notably, the proposed rule would no longer require the licensee to perform the investigation, but rather to ''ensure'' that the laboratory completes an investigation. This change is proposed because licensees and other entities do not typically retain personnel with the expertise required to investigate the complex technologies and processes involved in testing at the HHS-certified laboratories. The requirement for documentation of the investigation, which currently appears in Section 2.8(e)(4) in Appendix A to Part 26, would be moved to § 26.215(b)(8) in proposed Subpart J [Recordkeeping and Reporting Requirements] for organizational clarity.

Proposed § 26.167(g)(1) would explicitly state the requirements that are implied in current Section 2.8(e)(4) in Appendix A to Part 26, that the investigation must identify the root cause(s) of any unsatisfactory performance and the HHS-certified laboratory must take corrective actions. The proposed rule would expand these requirements to include the licensee or other entity, as well as the HHS-certified laboratory, depending upon the causes identified and the extent to which the causes are within each entity's control. The proposed requirement would be added to recognize that some testing errors are not attributable to the HHS-certified laboratory.

Proposed § 26.167(g)(2) would amend current Section 2.8(e)(5) in Appendix A to Part 26, which requires the licensee to notify the NRC if a false positive error occurs on a blind performance test sample and the error is determined to be administrative. The proposed paragraph would require the licensee or other entity, and the HHS-certified laboratory, to take corrective actions for any false positive errors in blind performance testing, in response to the findings of the investigation that would be required in proposed § 26.167(i). The proposed rule would continue to authorize licensees and other entities to require the laboratory to review and re-analyze previously tested specimens, if the investigation indicates that the error could have been systematic. The proposed rule would also delete reference to administrative errors, which appears in current Section 2.8(e)(5), so that any type of errors would fall under the requirements of the proposed paragraph. The reporting requirement in current Section 2.8(e)(5) would be moved to § 26.219(c)(2) in proposed Subpart J [Recordkeeping and Reporting Requirements] for organizational clarity.

Proposed § 26.167(g)(3) would amend current Section 2.8(e)(6) in Appendix A to Part 26, which addresses false positive errors resulting from methodological errors by the laboratory. The proposed rule would incorporate reference to validity testing, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as previously discussed with respect to § 26.31(d)(3)(i). The proposed rule would also replace the reference to the individual who is responsible for day-to-day management of the laboratory with a requirement for the laboratory's certifying scientist to document the retesting of specimens that may be required under this paragraph. This proposed change would be made for consistency with the related provision of the HHS Guidelines. The proposed paragraph would delete the last sentence of the current paragraph because it addresses the responsibilities of the HHS and is not relevant to the NRC or the licensees and other entities who are subject to Part 26. The proposed paragraph would retain the other provisions of current Section 2.8(e)(6), but adopt the simpler language of the related provision in the HHS Guidelines for increased clarity in the language of the proposed rule.

Proposed § 26.167(h) [Accuracy] would retain current Section 2.7(o)(3)(i) in Appendix A to Part 26 with minor editorial revisions. The current paragraph would be relocated to proposed § 26.167 because it is related to quality control of the HHS-certified laboratory's drug testing processes. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.167(i) [Calibrators and controls] would update current Section 2.7(o)(2) in Appendix A to Part 26. At the time the original paragraph was written, most laboratories prepared their own standards and controls. In the ensuing years, the number and variety of sources for materials used in performance testing has increased. The proposed paragraph would update current requirements to refer to several of the alternatives, including, but not limited to pure drug reference materials, stock standard solutions from other laboratories, and standard solutions obtained from commercial manufacturers. The proposed requirements in this paragraph incorporate the related requirements in the HHS Guidelines and would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines. The labeling requirements in the second sentence of current Section 2.7(o)(2) would be retained.

Section 26.169 Reporting Results

Proposed § 26.169 [Reporting results] would amend current Section 2.7(g) in Appendix A to Part 26, which contains requirements for HHS-certified laboratories' reporting of test results to the licensee's or other entity's MRO. The proposed rule would update the current requirements for consistency with the HHS Guidelines. In addition, the proposed rule would add requirements for reporting the results of validity testing, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.169(a) would amend current Section 2.7(g)(1) in Appendix A to Part 26, which establishes a time-limit on the HHS-certified laboratory's reporting of test results to the MRO and requirements for the processing and content of the report. The proposed rule would retain the requirement for the laboratory to report results to the MRO within 5 business days of receiving the specimen at the laboratory. Under the proposed rule, the HHS-certified laboratory's ''certifying scientist,'' rather than the laboratory's ''responsible individual,'' would certify the test results. This proposed change would be made for consistency with the updated term used to refer to this individual, as discussed with respect to proposed § 26.155(b). The proposed rule would add a reference to validity test results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed rule would delete the current prohibition on reporting test results for any specimen in a group of specimens sent to the laboratory by the licensee or other entity until the laboratory completes testing of all of the specimens in the group. The prohibition in the current rule was based upon a concern for maintaining control of specimen identity. However, new technologies for identifying specimens and aliquots (such as bar codes on specimen labels matched to bar codes on aliquots and the associated custody-and-control forms) have reduced the likelihood that specimen

identity may be lost, and, therefore, have substantially reduced the need for the requirement in the current rule.

Proposed § 26.169(b) would amend current Section 2.7(g)(2) in Appendix A to Part 26, which establishes requirements for the manner in which HHS-certified laboratories and licensee testing facilities must report test results to licensee management. The requirements in the current paragraph that are related to reporting test results from the licensee testing facility would be moved to § 26.139(a) of proposed Subpart F [Licensee Testing Facilities] for organizational clarity. The proposed paragraph would delete the current reference to ''special processing'' and replace it with reference to validity test results, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). In addition, the proposed rule would make minor changes in terminology, such as referring to a ''drug or drug metabolite,'' rather than a ''substance,'' for clarity in the rule language.

Proposed § 26.169(c) would amend portions of current Section 2.7(f)(2) in Appendix A to Part 26 by deleting the requirement for the HHS-certified laboratory to conduct tests for drugs and drug metabolites using both the cutoff levels specified in this part and any more stringent cutoff levels specified by the FFD program. Under the proposed rule, if the FFD program specifies cutoff levels that are more stringent than those specified in this part, the laboratory need only conduct testing using those more stringent cutoff levels, and need only report results from those tests to the MRO. This proposed change would be made for the reasons discussed with respect to proposed § 26.31(d)(1)(i)(D).

Proposed § 26.169(d) would be added to establish requirements for the laboratory's reporting of the results of validity testing. Under the proposed rule, HHS-certified laboratories would be required to report to the MRO quantitative results for any specimen that is found to be dilute, adulterated, or substituted. The MRO would be prohibited from reporting the quantitative validity test results to the licensee or other entity, except as permitted with a signed consent from the donor under proposed § 26.37(b). The proposed paragraph also would require the HHS-certified laboratory to contact the licensee's or other entity's MRO when the laboratory concludes that a specimen is invalid, and consult with the MRO to determine whether additional testing by a second HHS-certified laboratory would be useful in being able to report an adulterated or substituted test result. The proposed rule would permit the laboratory's contact with the MRO to occur using electronic means, such as telephone, fax, and e-mail. These proposed reporting requirements would be added for consistency with the related provisions in the HHS Guidelines.

Proposed § 26.169(e) would be added to require the HHS-certified laboratory to report more than one test result for a single specimen, if the laboratory obtains more than one non-negative test result from testing of the specimen. This proposed provision would require the laboratory to report any drug-positive test results, as well as any non-negative validity test results from the same specimen. This proposed change is necessary because sanctions for the different test results would differ under proposed § 26.75 [Sanctions]. Reporting multiple test results for a single specimen would be consistent with related requirements in the HHS Guidelines.

Proposed § 26.169(f) would update current Section 2.7(g)(3) in Appendix A to Part 26, which permits the MRO routinely to obtain quantitative test results from the HHS-certified laboratory. Specifically, the proposed rule would revise the first sentence of current Section 2.7(g)(3) by stating that the HHS-certified laboratory shall provide quantitative test results to the MRO upon request. The proposed paragraph would clarify the current requirement by stating that the MRO's request may be either a general request covering all such results or a specific case-by-case request. The proposed clarification would be necessary because the current sentence has raised questions from HHS-certified laboratories to the HHS. In addition, the proposed rule would add the third sentence of proposed § 26.169(f) to clarify requirements for reporting drug test results when the concentration of a drug, metabolite, or adulterant exceeds the linear range of the standard curve. The proposed rule would also delete the existing reference to test results from blood specimens for the reasons discussed with respect to proposed § 26.83(a). Disclosure of quantitative test results to licensees and other entities would continue to be subject to the requirements in proposed § 26.37(b). The proposed changes to this paragraph would be consistent with the related provisions in the HHS Guidelines.

Proposed § 26.169(g) would require HHS-certified laboratories to report to the MRO quantitative values for confirmatory opiate test results for morphine or codeine that are equal to or greater than 15,000 ng/mL. The proposed rule would add this requirement for consistency with the related provision in the HHS Guidelines and because the MRO would not be required to perform an assessment for clinical signs of opiate abuse in this instance, as discussed with respect to proposed § 26.185(f)(1).

Proposed § 26.169(h) would amend current Section 2.7(g)(4) in Appendix A to Part 26, which establishes requirements for the electronic transmission of test results from the HHS-certified laboratory to the MRO. Specifically, the proposed rule would clarify that the licensee or other entity is responsible for assuring the security of data transmissions from the laboratory to the MRO, rather than only the HHS-certified laboratory, as specified in the current requirement. The proposed change would respond to stakeholder comments at the public meetings discussed in Section V. The stakeholders accurately noted that licensees and other entities are responsible to the NRC for ensuring the security of their HHS-certified laboratories' data storage and transmission systems through their contracts with and audits of the laboratories. The proposed revision would more accurately characterize these relationships without changing the intent of the current provision.

Proposed § 26.169(i) would update current Section 2.7(g)(5) in Appendix A to Part 26, which establishes requirements for transmitting chain-of-custody documentation with test results to the MRO. The proposed rule would permit HHS-laboratories to use various means to transmit test results to the MRO, including transmittal of a computer-generated electronic report for negative test results. However, for non-negative test results, the proposed rule would require the laboratory to transmit a legible image or copy of the completed custody-and-control form to the MRO. The proposed change would be made for consistency with the related provision in the HHS Guidelines.

Proposed § 26.169(j) would further amend current Section 2.7(g)(5) in Appendix A to Part 26. The proposed paragraph would continue to require that the HHS-certified laboratory must retain the original custody-and-control form for any non-negative specimens. However, the proposed paragraph would assign responsibility for certifying the test results to the laboratory's certifying scientist, rather than to ''the individual responsible for day-to-day management of the laboratory or the individual responsible for attesting to the validity of the test

reports.'' The proposed change would be made for consistency with the updated terminology used to refer to this individual in the HHS Guidelines, as discussed with respect to proposed § 26.155(b).

Proposed § 26.169(k) would combine and amend current Section 2.7(g)(6) and (g)(7) in Appendix A to Part 26, which require the laboratory to submit a monthly statistical summary of drug test results to the licensee or other entity. The proposed rule would reduce the required frequency of the statistical summary report from monthly to annually in order to reduce the burden on licensees, other entities, and their laboratories. The proposed requirement for annual reporting would make the reporting time consistent with the NRC's need for the information as it relates to the NRC's inspection schedule and the annual FFD program performance report that would be required under proposed § 26.217 [Fitness-for-duty program performance data], for the reasons discussed with respect to that section. The proposed rule would also delete the existing reference to blood specimens because the option for donors to request blood testing for alcohol would be eliminated from the proposed rule, as discussed with respect to proposed § 26.83(a). The proposed rule would also delete the requirement to report drug test results at the cutoff levels specified in this part, if the FFD program uses more stringent cutoff levels, for the reasons discussed with respect to proposed § 26.169(c). The proposed rule would add a requirement to report initial and confirmatory test results for additional drugs (if the FFD program tests for additional drugs), as well as a requirement to report the number of specimens with confirmed positive 6-acetylmorphine (6-AM) test results. (The proposed rule would include testing for 6-AM, because the presence of 6-AM in a specimen uniquely identifies heroin use.) In addition, the proposed rule would add requirements to report the results of validity testing. These proposed changes would be made to conform the laboratory's annual summary report to other changes in the proposed rule, as discussed with respect to proposed §§ 26.217(b)(2), § 26.185(f)(1), and 26.31(d)(3)(i).

Subpart H—Determining Fitness-for-Duty Policy Violations and Determining Fitness

Section 26.181 Purpose

Proposed § 26.181 [Purpose] would describe the purpose of Subpart H, which is to establish requirements for MRO reviews of non-negative confirmatory drug test results and for making determinations of fitness. This proposed section would provide an overview of the contents of the proposed subpart, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Section 26.183 Medical review officer

Proposed § 26.183 [Medical review officer] would be added to present requirements related to the qualifications, relationships, staff, and responsibilities of the MRO to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, by grouping these requirements together in a single section.

Proposed § 26.183(a) [Qualifications] would combine and amend the requirements in current § 26.3 [Definitions] and Section 1.2 of Appendix A to Part 26, as well as portions of current Section 2.9(b) in Appendix A to Part 26. The proposed rule would reorganize the current requirements to eliminate redundancies and group together in one paragraph the related provisions in the current rule to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

The proposed paragraph would amend portions of the current requirements related to MRO qualifications. The proposed paragraph would continue to provide that the MRO must be a licensed physician, but would clarify that the MRO may hold either a Doctor of Medicine or Doctor of Osteopathy degree for consistency with the related regulations of other Federal agencies. The proposed rule would add a requirement that the MRO must be knowledgeable of Part 26 and the FFD policies and procedures of the licensees and other entities for whom the MRO provides services. The proposed requirements of this part, and the policies and procedures of various Part 26 FFD programs, may differ from those of other workplace drug and alcohol testing programs for which an MRO provides services. This proposed provision would ensure that an MRO is able to perform his or her function appropriately under this part. In addition, the proposed rule would add a requirement that, within 2 years following the date on which this rule is published in the **Federal Register**, the MRO must pass an MRO certification examination. The proposed requirement would increase consistency in the performance of the MRO function among FFD programs, given that licensees and other entities would be permitted to accept test results and the results of determinations of fitness conducted by other licensees and entities who are subject to the rule. The 2-year implementation date would provide MROs who are not currently certified with an opportunity to pass the required examination. With the exception of the first sentence of this proposed paragraph, which specifically relates to the MRO function under Part 26, these MRO qualification requirements would be consistent with those of other Federal agencies.

Proposed § 26.183(b) [Relationships] would establish requirements related to the relationships that would be permitted or prohibited between the MRO, the licensee or other entity, and HHS-certified laboratories. The first sentence of the proposed paragraph would retain the portion of the first sentence of current Section 2.9(b) in Appendix A to Part 26 that permits the MRO to be an employee of a licensee or other entity, or a contractor. The remaining sentences of the proposed paragraph would be added to prohibit the MRO from being an employee or agent of, or have any financial interest in, a laboratory or a contracted operator of a licensee testing facility for whom the MRO reviews drug testing results for the licensee or other entity. The proposed prohibition would be added based upon the experiences of other Federal agencies and would be consistent with the related provision in the HHS Guidelines.

Proposed § 26.183(c) [Responsibilities] would reorganize and update the requirements in current § 26.3 [Definitions] as well as Sections 1.2, 2.4(j), 2.7(d), and 2.9(a) and (b) in Appendix A to Part 26 as they relate to the responsibilities of the MRO in Part 26 programs. The proposed rule would reorganize the current provisions and combine them in one paragraph. In addition, the terminology used in the proposed paragraph would be revised to be consistent with that used throughout the proposed rule (*e.g.*, ''non-negative''). The proposed changes would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.183(c) would retain the requirement in current Section 2.9(a) in Appendix A to Part 26 for the MRO to review positive confirmatory drug test results and add a requirement for the MRO to review non-negative results from validity testing, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed

paragraph would also require the MRO to (1) identify evidence of subversion of the testing process; (2) identify issues or problems associated with the collection and testing of specimens; and (3) work with FFD program management to assure the overall effectiveness of the FFD program. The proposed rule would add these responsibilities to clarify that the MRO carries programmatic responsibilities within a licensee's or other entity's FFD program, in addition to responsibility for reviewing drug and specimen validity test results. These proposed additional responsibilities would strengthen the effectiveness of FFD programs by ensuring that the MRO's expertise is brought to bear in the management of FFD programs. The proposed paragraph would also increase the consistency of the MROs' responsibilities under Part 26 with the responsibilities of MROs in the drug and alcohol testing programs of other Federal agencies. Therefore, the proposed changes would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines, and Goal 3, which is to improve the effectiveness and efficiency of FFD programs.

Proposed § 26.183(c)(1) would retain and update the requirements contained in the current definitions of the term, ''Medical Review Officer,'' in § 26.3 and Sections 1.2 and 2.9(b) in Appendix A to Part 26. The proposed rule would continue to require the MRO to examine alternate medical explanations for any non-negative test result, which would include non-negative results of confirmatory validity testing as well as positive confirmatory drug test results. The proposed paragraph would also retain the current requirement for the MRO to interview the donor and review the donor's medical history and any other relevant biomedical factors as well as all medical records that the donor may make available to the MRO. In addition to the responsible use of legally prescribed medication, the proposed rule would require the MRO to consider a documented condition or disease state and the demonstrated physiology of the donor in determining whether a non-negative test result is an FFD policy violation. The proposed rule would require the MRO to consider the latter factors because they may cause some non-negative validity test results. The proposed changes would be necessary for consistency with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i), as well as to increase the consistency of Part 26 with advances in other relevant Federal rules and guidelines, which is Goal 1 of this rulemaking.

Proposed § 26.183(c)(2) would retain the meaning of the last sentence of current Section 2.9(b) in Appendix A to Part 26 with minor editorial revisions for consistency with the terminology used throughout the proposed rule. For example, the proposed rule would replace the term,'' split samples,'' in the current sentence with the term, ''split specimens.'' The proposed changes would be made for increased clarity in the language of the rule.

Proposed § 26.183(d) [MRO staff] would be added to establish requirements related to individuals who provide routine administrative support functions to MROs, whether the individuals are employees of the licensee or other entity, employees of the MRO, or employees of an organization with whom the licensee or other entity contracts for MRO services. The proposed rule would add requirements related to MRO staff because these individuals (1) have access to drug test results that are forwarded to an MRO from the HHS-certified laboratory; (2) perform some administrative functions for MROs that permit them to view donors' private medical information; and (3) often have contact with donors. The NRC is not aware of any instances in which individuals who serve as MRO staff have compromised the confidentiality of donors' test results, medical information, or otherwise acted improperly in Part 26 programs. However, the proposed rule would adopt requirements related to the MRO staff function from the regulations of other Federal agencies who similarly permit MRO staff to provide administrative support to MROs to ensure that donors' medical information is handled with the highest concern for individual privacy. The proposed requirement would also ensure that information related to non-negative test results is not released to licensee or other entity management personnel until the MRO has determined that a donor has violated the FFD policy. These proposed changes would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines, and Goal 7, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.183(d)(1) [Direction of MRO staff activities] would be added to require an MRO to be directly responsible for the administrative, technical, and professional activities of individuals who perform MRO staff duties. The NRC does not intend, through use of this language, to mandate that MROs must share the same physical space with all their staff members at all times. Direction of staff activities need not occur face-to-face on an all-day, every-day basis. Direction may also take place through using a variety of electronic communications. However, the proposed rule would require that the MRO's direction of staff must be meaningful. Meaningful direction would involve (1) personal oversight of staff members' work; (2) personal involvement in their performance evaluation, hiring, and firing; (3) line authority over the staff for decisions, direction and control; and (4) regular contact and oversight concerning drug testing program matters. The proposed rule would also require that the MRO's direction and control of the staff members cannot be superseded by or delegated to anyone else with respect to the review of negative tests and other functions that staff members perform for the MRO. In addition, the proposed rule would require that MROs must personally review a confirmed positive drug test result that is received from the HHS-certified laboratory, as well an adulterated or substituted result, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.183(d)(1)(i) would require that MRO staff duties must be independent from any other activity or interest of the licensee or other entity. The proposed rule would add this requirement because, by contrast to other Federal agencies' regulations, Part 26 permits employees of licensees and other entities to perform MRO staff activities for MROs who work off site and are not physically present to supervise the staff. These circumstances may provide greater opportunities for inadvertent compromise of the independence of the MRO function than situations in which the MRO and his or her staff are physically co-located, such as the inadvertent release of non-negative test results before the MRO has reviewed the results with the donor. Therefore, the NRC believes that the proposed requirement is necessary to protect the integrity of the MRO function and donors' privacy.

Proposed § 26.183(d)(ii) would be added to further specify the MRO's responsibilities for directing MRO staff. These responsibilities would include, but would not be limited to, ensuring that the procedures that must be

followed by MRO staff meet the regulations of this part and HHS' and professional standards of practice, and that personal information about the donor is maintained confidential with the highest regard for individual privacy. The proposed requirements would meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.183(d)(1)(iii) would also be added to prohibit the MRO from delegating his or her responsibilities for directing MRO staff activities to any individual or entity, other than another MRO. Although the NRC is unaware of any instances in which the MRO function has been compromised by MRO staff in Part 26 programs, the experience of other Federal agencies has indicated that clear limits on who may direct MRO staff activities are advisable to maintain the independence and integrity of the MRO function. Therefore, proposed § 26.183(d)(1)(iii) would establish these clear limits.

Proposed § 26.183(d)(2) [MRO staff responsibilities] would be added to specify the job duties that MRO staff may and may not perform. The proposed provisions would also be based on the experience of other Federal agencies, which has indicated that clear limits on MRO staff job duties are necessary to protect donor confidentiality and the integrity of the MRO process. Proposed § 26.183(d)(2)(i) would permit MRO staff to receive from the HHS-certified laboratory, review, and report negative test results to the licensee's or other entity's designated reviewing official, under the MRO's direction. Proposed § 26.183(c)(2)(ii) would permit MRO staff to review the custody-and-control forms for specimens that the laboratory reports as non-negative and correct errors, but would require the MRO to review and approve the corrections. Proposed § 26.183(d)(2)(iii) would prohibit staff from conducting interviews with donors to discuss non-negative test results and requesting or reviewing medical information from donors related to any non-negative test results. Proposed § 26.183(c)(2)(iv) would prohibit MRO staff from reporting or discussing non-negative test results received from the HHS-certified laboratory with any individuals other than the MRO and other MRO staff. The proposed provisions would be necessary to protect donor confidentiality and the integrity of the MRO review process while permitting licensees and other entities to realize the cost efficiencies associated with the MRO delegating some tasks to staff.

Section 26.185 Determining a Fitness-for-Duty Policy Violation

Proposed § 26.185 [Determining a fitness-for-duty policy violation] would amend requirements related to the MRO's determination that a non-negative test result constitutes an FFD policy violation, as follows:

Proposed § 26.185(a) [MRO review required] would amend portions of current Section 2.9(a) in Appendix A to Part 26, which establishes requirements for the MRO's review of test results from the HHS-certified laboratory. The term, ''non-negative test result,'' would be used in the proposed paragraph to indicate that the MRO's review would encompass validity test results, as well as drug test results, consistent with the addition of validity testing requirements in the proposed rule. The proposed paragraph would also expand the MRO's responsibilities to include assisting the licensee or other entity in determining whether a donor has attempted to subvert the testing process. These responsibilities may include, but would not be limited to, reviewing non-negative validity test results and authorizing the testing at an HHS-certified laboratory of any suspicious substance discovered in a donor's pockets that could be used to adulterate or substitute a urine specimen. The proposed change would be consistent with the NRC's increased concern with potential subversion of the testing process, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed rule would also delete the current reference to ''nuclear power plant worker'' and replace it with ''individual,'' because persons other than nuclear power plant workers would be subject to the proposed requirement. In addition, the proposed rule would eliminate the current requirement for the MRO to review blood test results from the HHS-certified laboratory because the proposed rule would no longer permit donors to request testing of a blood specimen for alcohol, as discussed with respect to proposed § 26.83(a). However, the proposed paragraph would retain the current requirement that the MRO must complete the review of any non-negative test results before transmitting results to a licensee's or other entity's designated representative.

Proposed § 26.185(b) [Reporting of initial test results prohibited] would retain the intent of the requirement in the last sentence of current Section 2.9(a) in Appendix A to Part 26. Specifically, the proposed rule would continue to prohibit the MRO from communicating to licensees and other entities any non-negative initial test results reported by the HHS-certified laboratory before confirmatory testing has been completed and the MRO has conducted his or her review. However, the proposed rule would extend this prohibition to MRO staff, consistent with the addition of requirements related to MRO staff in proposed § 26.183(d), as discussed with respect to that paragraph.

Proposed § 26.185(c) [Discussion with the donor] would amend current Section 2.9(c) in Appendix A to Part 26. The proposed rule would continue to require the MRO to discuss a positive confirmatory drug test result with the donor before determining that the FFD policy had been violated. The proposed rule would add a requirement for the MRO to discuss non-negative confirmatory validity test results with the donor as part of the review process, consistent with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i). The proposed rule would add a reference to ''other occurrence'' to address circumstances in which the donor may have engaged in a subversion attempt that would be detected through other means, including, but not limited to, the specimen collection process in proposed Subpart E [Collecting Specimens for Testing]. The proposed rule would eliminate the current requirement for the MRO to contact the EAP. Under the proposed rule, referral to the EAP would be at the licensee's or other entity's discretion, as documented in FFD procedures. The current requirement would be eliminated because most licensees terminate the employment of individuals who have a confirmed non-negative drug test result, and it would be inappropriate to require licensees and other entities to provide EAP services to persons they will no longer employ. If a licensee or other entity plans to consider granting authorization to the individual after his or her authorization has been terminated unfavorably for the FFD policy violation, the proposed rule would require the licensee or other entity to meet the applicable requirements of proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information]. The changes in the proposed paragraph would be made for consistency with other proposed changes to the regulation.

Proposed § 26.185(d) [Donor unavailability] would be added to clarify the circumstances in which the MRO may confirm a non-negative test

result or other occurrence as an FFD policy violation without having first discussed the test result or occurrence with the donor. These circumstances would include (1) the donor expressly declining the opportunity to discuss the possible FFD policy violation with the MRO in proposed § 26.185(d)(1); (2) the donor failing to contact the MRO within one business day after being contacted by the licensee or other entity or an MRO staff member in proposed § 26.185(d)(2); and (3) the MRO being unable to contact the donor after making a reasonable effort to do so in proposed § 26.185(d)(2). The proposed paragraphs would provide more detailed guidance than the first sentence of current Section 2.9(c) in Appendix A to Part 26, in response to the many questions that have arisen regarding implementation of the requirement for MROs to discuss test results with the donor. The proposed revisions would also respond to stakeholders requests during the public meetings discussed in Section V. In questions to the NRC staff and during the public meetings, licensees have pointed out that the current rule makes no provision for these circumstances, which do occasionally arise. Therefore, the proposed paragraphs would address these circumstances.

For the same reasons, proposed § 26.185(e) [Additional opportunity for discussion] would specify procedures for addressing a circumstance in which the donor was unable to contact the MRO to discuss a non-negative test result or other occurrence. The proposed paragraph would permit the donor to present information to the MRO documenting the circumstances that unavoidably prevented the donor from being contacted by or from contacting the MRO, and would permit the MRO to reopen the procedure for determining whether the donor had violated the FFD policy. The proposed paragraph would also permit the MRO to modify the initial determination based on the information that the donor provides.

The requirements in proposed § 26.185(d) and (e) would incorporate the related requirements in 49 CFR Part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs'' (65 FR 41944; August 9, 2001). Therefore, in addition to responding to implementation questions from licensees and stakeholder requests, the proposed provisions would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.185(f)–(i) would be added to establish requirements for the MRO's review of validity test results. These proposed paragraphs would be added for consistency with the addition of requirements to conduct validity testing throughout the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i).

Proposed § 26.185(f) [Review of invalid specimens] would clarify the MRO's responsibilities in the event that the HHS-certified laboratory reports that a specimen is invalid. The proposed paragraph would be consistent with related provisions in the HHS Guidelines, and would be necessary because MRO actions in response to an invalid specimen are not specified in the current rule. Proposed § 26.185(f) would provide the MRO with several alternative courses of action if a specimen is declared to be invalid by the laboratory, as follows:

Proposed § 26.185(f)(1) would require the MRO to consult with the HHS-certified laboratory to determine whether additional testing by another HHS-certified laboratory may be useful for completing testing of the specimen. Another laboratory may use different testing methods that could provide more definitive test results regarding the invalid specimen, such as the ability to identify a new adulterant or obtain valid drug test results despite the presence of an interfering substance in the specimen. If the MRO and laboratory agree that additional testing would be useful, the MRO would direct the laboratory to forward an aliquot of the specimen to a second HHS-certified laboratory for further testing.

Proposed § 26.185(f)(2) would require the MRO to contact the donor to determine whether there is an acceptable medical explanation for the invalid result, if the MRO and HHS-certified laboratory agree that testing at a second laboratory would not be useful. If the MRO determines that there is an acceptable medical explanation for the invalid result, the MRO would report to the licensee or other entity that no FFD policy violation had occurred, but that a negative test result had not been obtained. Because the specimen did not yield negative test results, the licensee or other entity could not use the invalid test result in the decision to grant or deny authorization. However, the proposed paragraph would also require the MRO to assess whether the medical condition would similarly affect a second specimen collection. If the MRO determines that the medical condition is temporary and would not affect a second specimen, he or she would direct the licensee or other entity to collect another specimen from the donor and the licensee or other entity would then rely upon the results of the second test to make an authorization decision. The proposed rule would not require the second specimen to be collected under direct observation in this situation, because there would be no reason to believe that the individual may have attempted to subvert the testing process. If the MRO determines that the medical condition would likely affect the validity of further urine specimens, the proposed paragraph would permit the MRO to authorize an alternative method for drug testing. At this time, the NRC declines to specify the alternative methods that the MRO may authorize, which may include, but would not be limited to, testing of alternate specimens, such as hair, oral fluids, or sweat. The NRC would leave the selection of an alternative method to the professional judgement of the MRO. The proposed rule also would prohibit licensees and other entities from taking management actions or imposing sanctions on the basis of an invalid test result from a medical condition, because no FFD violation would have occurred.

Proposed § 26.185(f)(3) would require the MRO to direct the licensee or other entity to collect another specimen under direct observation, if testing by another laboratory would not be useful in obtaining a valid result and the donor did not provide an acceptable medical explanation for the invalid specimen. The invasion of privacy associated with a directly observed collection would be warranted in this situation because the invalid specimen may be the result of a subversion attempt. The proposed rule would require the licensee or other entity to rely upon the test results from the directly observed collection in authorization decision-making because the result from the invalid specimen would be neither negative or non-negative, and so could not meet the requirements for granting authorization to an individual in proposed Subpart C [Granting and Maintaining Authorization] or serve as the basis for imposing the sanctions specified in proposed Subpart D [Management Actions and Sanctions].

Proposed § 26.185(g) [Review of dilute specimens] would be added to establish requirements for the MRO's review of positive confirmatory drug test results from dilute specimens. The proposed paragraph would be added because reviewing test results from a dilute specimen is complex and MRO actions in response to a dilute specimen are not addressed in the current rule.

Proposed § 26.185(g)(1) would require the MRO to confirm a drug-positive FFD

violation for a dilute specimen in which drugs or drug metabolites are detected, if the MRO determines that there is no legitimate medical explanation for the presence of the drugs or metabolites in the specimen. There are many legitimate reasons for submitting a dilute specimen, which is the basis for omitting the submission of a dilute specimen as one type of subversion attempt for which a permanent denial of authorization would be required in proposed § 26.75(b). Although neither the submission of a dilute specimen nor the presence of drugs or drug metabolites in a dilute specimen establishes that the donor has attempted to subvert the testing process without additional evidence of subversion, the presence of drugs or metabolites in a dilute specimen without a legitimate medical explanation is a sufficient basis for the MRO to confirm that the donor has violated the FFD policy.

Proposed § 26.185(g)(2) would permit the MRO to require the HHS-certified laboratory to test a dilute specimen for drugs and drug metabolites at the LOD of the confirmatory assay used, if the MRO has reason to believe that the donor may have attempted to subvert the testing process. The proposed rule would authorize the MRO to request testing at the LOD for any drugs or drug metabolites for which testing would be permitted in this part. The MRO would be permitted to request testing at the LOD in these circumstances because the immunoassay tests used for initial drug testing may not be sufficiently sensitive to detect very low concentrations of drugs or metabolites in a dilute specimen. However, confirmatory testing at the LOD may detect very low concentrations of drugs or metabolites in a dilute specimen and, therefore, would ensure that an attempt to hide drug abuse through specimen dilution is unsuccessful.

Proposed § 26.185(g)(2)(i)–(g)(2)(iii) would define the circumstances that constitute a reason to believe that a donor may have attempted to subvert the testing process and provide a sufficient basis for the MRO to require the additional testing permitted in proposed § 26.185(g)(2). These circumstances would be the same as those specified in proposed § 26.115(a)(1)-(a)(3), as discussed with respect to those provisions.

Proposed § 26.185(g)(3) would clarify that the MRO may also require the additional testing of a dilute specimen that would be permitted in proposed § 26.185(g)(2), if the specimen was collected under direct observation, or if such testing is required by the SAE as a result of a determination of fitness conducted under proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information]. The proposed paragraph would add these permissions for consistency with the related provisions in the proposed rule.

Proposed § 26.185(g)(4) would require the MRO to determine whether there is clinical evidence of the illegal use of opiates, if opiates other than 6–AM at any concentration are detected in a dilute specimen, before the MRO verifies that the donor has violated the FFD policy. The proposed rule would not require an evaluation for clinical evidence of illegal use of opiates for 6–AM, because it's presence in a specimen is proof of heroin use. However, the proposed paragraph would not establish cutoff levels below and above which an evaluation for clinical evidence of illegal opiate use is not required (in contrast to those contained in proposed paragraph (j) of this section), because the concentration of opiates in a dilute specimen would not bear any known relationship to the concentration of opiates in vivo (*i.e.*, in the donor's body). For similar reasons, the proposed rule would also require an evaluation for clinical evidence of abuse before the MRO determines that the donor has violated the FFD policy when drugs or drug metabolites are detected in a dilute specimen, indicating that the donor has used prescription or over-the-counter medications.

Proposed § 26.185(h) [Review of substituted specimens] would be added to establish requirements for the MRO review of substituted test results. The proposed provisions would be added because MRO actions in determining an FFD policy violation for a substituted specimen are not addressed in the current rule. The proposed provisions would be consistent with the related provisions in the HHS Guidelines.

Proposed § 26.185(h)(1) would require the MRO to contact the donor to determine whether there is a legitimate medical reason for the substituted result. The proposed paragraph would require the MRO to give the donor the opportunity to provide legitimate medical evidence, within 5 business days of being contacted by the MRO, that the individual's normal physiology produced the substituted result and would establish requirements for the medical evidence that would be necessary. The proposed rule would also provide examples of donor claims that the MRO may not consider to be legitimate medical explanations, including, but not limited to, race, gender, body weight, and dietary factors.

Proposed § 26.185(h)(2) would direct the MRO to report to the licensee or other entity that the specimen was substituted, if the MRO determines that there is no acceptable medical explanation for the substituted test result.

Proposed § 26.185(h)(3) would direct the MRO to report to the licensee or other entity that no FFD policy violation has occurred, if the MRO determines that the donor has provided an acceptable medical explanation for the substituted test result.

Proposed § 26.185(i) [Review of adulterated specimens] would establish requirements for the MRO's review of adulterated test results. The proposed provisions would be added because MRO actions in determining an FFD policy violation for an adulterated specimen are not addressed in the current rule. Proposed § 26.185(i)(1) would require the MRO to contact the donor and offer him or her the opportunity to provide an acceptable medical explanation for the adulterated result. The proposed rule would also specify the procedures that the donor must follow in providing the medical explanation. If the donor does not provide an acceptable medical explanation for the adulterated result, proposed § 26.185(i)(2) would require the MRO to report to the licensee or other entity that the specimen is adulterated. If the donor provides an acceptable medical explanation, proposed § 26.185(j)(3) would require the MRO to report that no FFD policy violation had occurred. These proposed requirements would be consistent with the related provisions in the HHS Guidelines.

Proposed § 26.185(j) [Review for opiates, prescription and over-the-counter medications] would amend current Section 2.9(d) in Appendix A to Part 26 to address circumstances that have arisen since Part 26 was first published and about which licensees have sought guidance from the NRC. The proposed paragraph would amend the current requirements in Section 2.9(d) in Appendix A to Part 26 and add others, as follows:

Proposed § 26.185(j)(1) would incorporate updated requirements from the HHS Guidelines related to the MRO's review of a positive drug test result for opiates. The proposed rule would revise, but retain the meaning of the requirement for the MRO to determine that there is clinical evidence of illegal use of opiates, which appears in current Section 2.9(d) in Appendix A to Part 26. Because some licensees and other entities rely on MROs who work off site and are not available to conduct

the required assessment, the proposed rule would permit the MRO to designate another licensed physician who has knowledge of the clinical signs of drug abuse to conduct the evaluation. The proposed change would continue to ensure that the clinical assessment is performed by a qualified physician while reducing unnecessary burden by permitting FFD programs to continue to rely on off-site MROs. Therefore, the proposed change would meet Goal 5 of this rulemaking, which is to improve Part 26 by eliminating or modifying unnecessary requirements.

The proposed rule would make other changes to current Section 2.9(d) in Appendix A to Part 26. The proposed paragraph would eliminate the examples of clinical signs of opiate abuse in current Section 2.9(d), because these signs are addressed as part of the training that MROs would obtain in order to pass the comprehensive certification examination required in proposed § 26.183(a) [Qualifications]. The proposed rule would retain the provision in current Section 2.9(d) that permits the MRO to omit the evaluation for clinical evidence of abuse if the laboratory identifies 6-AM in the specimen. However, the proposed rule would add permission for the MRO to omit the evaluation if the morphine or codeine concentration in the specimen is equal to or greater than 15,000 ng/mL without a legitimate medical explanation for the presence of opiates at or above this concentration. The proposed change would be made because, in the experience of other Federal programs, such concentrations without a legitimate medical explanation can only indicate substance abuse. In addition, the proposed rule would prohibit the MRO from considering consumption of food products as a legitimate medical explanation for the specimen having morphine or codeine concentrations at or above 15,000 ng/mL, given that food consumption could not result in a concentration at this level.

Proposed § 26.185(j)(2) would retain the last sentence of current Section 2.9(d) in Appendix A to Part 26, which requires the MRO to determine whether there is clinical evidence, in addition to the positive drug test result, of abuse of these substances or their derivatives.

Proposed § 26.185(j)(3) would be added to provide greater consistency in MRO determinations related to a donor's use of another person's prescription medication. The NRC is aware that MROs in different FFD programs have varied in the determination they make as to whether the use of another person's prescription medication is an FFD policy violation. The proposed paragraph would clarify the NRC's intent with respect to these circumstances. In the proposed rule, if a donor claims, and the MRO confirms, that a non-negative drug test result is due to the unauthorized use of another person's prescription medication, the proposed rule would require the MRO to evaluate or ensure that the donor is evaluated for clinical evidence of abuse. If no clinical evidence of abuse is identified, the MRO would report to the licensee or other entity that a violation of the FFD policy regarding misuse of a prescription medication had occurred. If clinical evidence of abuse is identified, the MRO would confirm that the test results are positive for the drug or metabolites detected.

Proposed § 26.185(j)(4) would be added to assure greater consistency in MRO determinations related to a donor's use of a prescription or over-the-counter medication that the donor obtained legally in a foreign country. Again, the NRC is aware that MROs in different FFD programs have varied in the determination they make as to whether the use of medications legally obtained in a foreign county is an FFD policy violation. The proposed paragraph would clarify the NRC's intent with respect to these circumstances. At the licensee's or other entity's discretion and in accordance with the FFD policy and procedures, the proposed rule would permit the MRO to confirm a test result as negative if there is a legitimate medical use for the medication that the donor obtained legally in a foreign country and the donor has used it properly for its intended medical purpose. The proposed rule would prohibit the MRO from confirming a test result as negative if the drug used has no legitimate medical purpose, including, but not limited to phencyclidine and heroin.

Proposed § 26.185(j)(5) would be added to prohibit the MRO from considering the consumption of food products, supplements, and other preparations that are available over-the-counter as a legitimate medical explanation for the specimen having drugs or drug metabolites above the cutoff levels specified in proposed § 26.163, including, but not limited to hemp products and coca leaf tea. In so doing, the proposed rule would provide guidance concerning a potential subversion technique that has become an issue for several licensees (*i.e.,* claims of ingestion of hemp food products as the basis for a positive marijuana test). Ingestion of food products containing hemp seeds or extracts has produced marijuana positive test results, even though the seller claimed that the seeds or extracts were sterilized to remove the THC metabolite. The NRC endorses the Federal policy in this matter that was published by the Department of Transportation, with the concurrence of the Departments of Justice and Health and Human Services and the Office of National Drug Control Policy. MROs must never accept an assertion of consumption of a hemp food product as a basis for confirming that a marijuana test is negative. Consuming a hemp food product is not a legitimate medical explanation for a prohibited substance or metabolite in an individual's specimen. When a specimen is positive for THC, the only legitimate medical explanation for its presence is a prescription for marinol. Under proposed § 26.29(a)(6) and (a)(7), individuals who are subject to Part 26 would receive training in order to be able to avoid ingesting substances that could result in positive drug test results, such as over-the-counter medications, food products, supplements, and other preparations.

Proposed § 26.185(j)(6) would be added to prohibit the MRO from accepting the use of any drugs that are listed in Schedule I of section 202 of the Controlled Substances Act [21 U.S.C. 812] as a legitimate medical explanation for a positive confirmatory drug test result, even if the drug may be legally prescribed and used under State law. Drugs that are listed in Schedule I of section 202 of the Controlled Substances Act have the following characteristics: (1) The drug or other substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in treatment in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. The proposed prohibition would primarily be intended to address the medical use of marijuana, which some States permit, as well as the use of certain hallucinogenic drugs. Although some have argued that the use of such drugs under State laws may not adversely reflect on an individual's trustworthiness and reliability, the proposed requirement would be necessary to ensure that individuals who are subject to this part can be trusted and relied upon to comply with Part 26 requirements and are not impaired from using these drugs when performing duties that require them to be subject to this part.

Proposed § 26.185(k) [Results consistent with legitimate drug use] would amend current Section 2.9(f) in Appendix A to Part 26. The current

paragraph instructs the MRO to report to the licensee that a drug test result is negative if, after review, the MRO determines that there is a legitimate medical explanation for the positive test result and that use of the substance identified through testing in the manner and at the dosage prescribed does not reflect a lack of reliability and is unlikely to create on-the-job impairment. However, the current provision does not provide instructions for MRO action in the case of an individual whose drug use is legitimate but may cause impairment on duty. Therefore, if the MRO determines that a risk exists, the proposed rule would require that a determination of fitness must be performed. Because the MRO determined that the drug test result was negative, the licensee or other entity would not impose sanctions on the individual. However, the results of the determination of fitness may indicate a need to establish controls and conditions on the individual's performance of certain job duties, in order to ensure that any impairment from the drug use does not result in adverse impacts on public health and safety or the common defense and security. The proposed provision would meet Goal 3 of this rulemaking, which is to improve the effectiveness of FFD programs, by providing greater assurance that individuals who are subject to the rule are fit to safely and competently perform their duties.

Proposed § 26.185(l) [Retesting authorized] would amend current Section 2.9(e) in Appendix A to Part 26, which permits the MRO to authorize retesting of an aliquot of a specimen if there is any question about the accuracy or validity of a drug test result. The proposed rule would retain the provisions in current Section 2.9(e) that permit a donor to request a retest of an aliquot of a single specimen or a split specimen, if the FFD program follows split specimen procedures. However, the proposed rule would update the current requirement for consistency with the terminology used throughout the proposed rule (*e.g.,* ''Bottle B'' to refer to a split specimen), as discussed with respect to proposed § 26.5 [Definitions]. The proposed rule would also add a requirement that the retesting must be conducted at a second HHS-certified laboratory that did not conduct the original tests. The proposed requirement that retesting must be performed at a second HHS-certified laboratory would ensure the independence of the second testing and provide additional protection of donors' due process rights under the proposed rule. In addition, the proposed requirement would increase the consistency of Part 26 with related provisions in the HHS Guidelines. The proposed rule would also require the donor to request the retest in writing, in order to ensure donors' control over the specimen and rights to privacy, as discussed with respect to § 26.135(b).

Proposed paragraph § 26.185(m) [Results scientifically insufficient] would amend current Section 2.9(g) in Appendix A to Part 26, which permits the MRO to determine that a positive drug test result is scientifically insufficient and declare it negative. The proposed paragraph would change some of the terminology used in the current paragraph (*e.g.,* ''samples'' would be changed to ''specimens'') for consistency with the terminology used throughout the proposed rule, as discussed with respect to proposed § 26.5 [Definitions]. The proposed rule would also make other changes to this paragraph, as follows:

The proposed paragraph would amend the first sentence of the current requirement, which permits the MRO to report to the licensee or other entity that a test result is negative if he or she determines that it is scientifically insufficient for further action. The proposed rule would instruct the MRO to report that the test result is ''not an FFD policy violation'' in these circumstances, rather than a negative test result. The proposed change would be made for consistency with other changes in the proposed rule related to invalid test results, as discussed with respect to proposed § 26.185(f). That is, a test result that the MRO determines to be scientifically insufficient for further action (as well as an invalid test result) could not be a basis for a licensee or other entity to grant or deny authorization or impose sanctions because it would be neither a negative nor non-negative test result. Therefore, the proposed change would meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

The proposed rule would also add a statement to the current paragraph to indicate that the MRO is neither expected nor required to request retesting of the specimen unless, in the sole opinion of the MRO, such retesting is warranted. The proposed rule would add this statement because, in the experience of other Federal agencies, some MROs have been pressured by the organization to whom they provide services to request retesting of specimens that the MRO has confirmed to be non-negative. Although the NRC is not aware of any such instances in Part 26 programs, the proposed rule would clarify that the MRO, alone, is authorized to request retesting to further protect the independence of the MRO function.

In addition, the last sentence of current Section 2.9(g), which contains records retention requirements, would be moved to § 26.215(b)(11) of proposed Subpart J [Recordkeeping and Reporting Requirements] and grouped with other records retention requirements in the proposed rule for organizational clarity.

Proposed § 26.185(n) [Evaluating results from a second laboratory] would establish new requirements for the MRO's determination of an FFD policy violation based on a retest of a single specimen or a test of the specimen in Bottle B of a split specimen. The proposed paragraph would specify that the test result(s) from the second HHS-certified laboratory would supersede the confirmatory test results provided by the HHS-certified laboratory that performed the original testing of the specimen. The proposed rule would incorporate these requirements from the HHS Guidelines because the current rule does not address MRO actions in response to test results from a second laboratory. Therefore, the proposed paragraph would be consistent with the related provisions in the HHS Guidelines and would meet Goal 1 of this rulemaking, which is to update and enhance the consistency of Part 26 with advances in other relevant Federal rules and guidelines.

Proposed § 26.185(o) [Re-authorization after a first violation] would be added to address the MRO's review of drug test results following a first violation of the FFD policy based on a confirmed positive drug test result. The current rule does not require the MRO to evaluate whether drug test results in these instances indicate subsequent drug use after a first confirmed positive drug test result, and MROs from different FFD programs have implemented different policies. Specifically, the proposed paragraph would require the MRO to determine whether subsequent drug test results indicate further drug use since the first positive drug test result was obtained. For example, because marijuana metabolites are fat-soluble and may be released slowly over an extended period of time, a second positive test result for marijuana from a test that is performed within several weeks after a first confirmed positive test result for marijuana may not, in fact, indicate further marijuana use. Therefore, in this case, the proposed provision would prohibit the MRO from determining that a second FFD policy violation for

marijuana had occurred, if the quantitative results from confirmatory testing of the second specimen are positive for marijuana metabolites, but at a concentration that would be inconsistent with additional marijuana use since the first non-negative test result was obtained. If the MRO concludes that the concentration of marijuana metabolites identified by confirmatory testing is inconsistent with further marijuana use since the first positive test result, the MRO would declare the test result as negative, even if the quantitative test result exceeds the 15 ng/mL confirmatory cutoff level specified in this part or a licensee's or other entity's more stringent cutoff level. The proposed provision would prevent individuals from being subject to a 5-year denial of authorization for a second confirmed positive drug test result under proposed § 26.57(e), when the donor has not engaged in further drug use, consistent with Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.185(p) [Time to complete MRO review] would amend current § 26.24(e), which requires the MRO to complete his or her review of test results and notify management of the results of his or her review within 10 days after an initial presumptive positive screening test result. The proposed rule would replace the current phrase, ''initial presumptive positive screening test result,'' with the phrase, ''initial non-negative test result,'' for consistency with the terminology used throughout the proposed rule, as discussed with respect to proposed § 26.5 [Definitions]. The proposed paragraph would also require the MRO to report his or her determination that a non-negative test result is an FFD policy violation in writing to the licensee or other entity and in a manner that ensures the confidentiality of the information. The proposed changes would be made for consistency with the related provisions in the HHS Guidelines.

Section 26.187 Substance Abuse Expert

A new § 26.187 [Substance abuse expert] would be added to establish minimum requirements for a new position within FFD programs, the ''substance abuse expert'' (SAE), for the reasons discussed in Section IV. C.

Proposed § 26.187(a) [Implementation] would be added to require SAEs to meet the requirements of this proposed section within 2 years of the date on which the final rule is published in the **Federal Register**. The 2-year period would be proposed in order to ensure that professionals who may currently be performing determinations of fitness, but who do not meet these proposed requirements, have the time necessary to obtain the required credentials, knowledge, and qualification training.

Proposed § 26.187(b) [Credentials] would be added to establish the credentials required for an individual to serve as an SAE under this part. The proposed rule would require that the SAE must possess the extensive education, training, and supervised clinical experience that are prerequisites for obtaining the professional credentials listed in proposed § 26.187(b)(1)–(b)(5). However, proposed § 26.187(c)–(e) would require an SAE to possess additional knowledge and experience directly related to substance abuse disorders and the requirements of this part.

Proposed § 26.187(c) [Basic knowledge] and (d) [Qualification training] would be added to establish the specific areas of expertise and training that would be required for an individual to serve as an SAE under this part. The proposed knowledge and training requirements in these two paragraphs would be necessary to ensure that SAEs possess the knowledge and clinical experience required to perform the SAE function effectively in a Part 26 program.

Proposed § 26.187(c) would require SAEs to possess the following types of knowledge: (1) Knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled-substance abuse disorders, in proposed § 26.187(c)(1); (2) knowledge of the SAE function as it relates to individuals who perform the job duties that require an individual to be subject to this part, in proposed § 26.187(c)(2); and (3) knowledge of this part and any changes to its requirements, in proposed § 26.187(c)(3).

Proposed § 26.187(d) would establish the topical areas in which an SAE must be trained. The proposed qualification training requirements would include training in the following areas: (1) The background, rationale, and scope of this part, in proposed § 26.187(d)(1); (2) key drug and alcohol testing requirements of this part, in proposed § 26.187(d)(2) and (d)(3), respectively; (3) SAE qualifications and prohibitions, in proposed § 26.187(d)(4); (4) the role of the SAE in making determinations of fitness, and developing treatment recommendations and followup testing plans, in proposed § 26.187(d)(5); (5) procedures for consulting and communicating with licensee or other entity officials and the MRO, in proposed § 26.187(d)(6); (6) reporting and recordkeeping requirements of this part as they related to the SAE function, in proposed § 26.187(d)(7); and (7) appropriate methods for addressing issues that SAEs confront in carrying out their duties under this part, in proposed § 26.187(d)(8).

Proposed § 26.187(e) [Continuing education] would be added to ensure that SAEs maintain the knowledge and skills required to perform the SAE function under this part. The proposed paragraph would require SAEs to complete at least 12 continuing professional education hours relevant to performing the SAE function during each 3-year period following completion of initial qualification training. Proposed § 26.187(e)(1) would describe the topics that must be covered in the continuing education training, to include, but not limited to, new drug and alcohol testing technologies, and any rule interpretations or new guidance, rule changes, or other developments in SAE practice under this part, since the SAE completed the qualification training requirements in proposed § 26.187(d). Proposed § 26.187(e)(2) would require documented assessment of the SAE's understanding of the material presented in the continuing education activities in order to ensure that the SAE learned the material. These proposed continuing educations requirements would necessary to ensure that SAEs maintain updated knowledge and skills to continue performing the SAE function effectively under this part.

Proposed § 26.187(f) [Documentation] would be added to specify the records that the SAE must maintain in order to demonstrate that he or she meets the proposed requirements of this section. The SAE would be required to provide the documentation, as requested, to NRC representatives, and to licensees or other entities who would rely on the SAE's services. Licensees and other entities who intend to rely upon a determination of fitness that is made by an SAE under another FFD program would also be required to have access to this documentation. These proposed requirements would be necessary to ensure that licensees and other entities, and the NRC, have access to the documentation required to verify that the SAE's knowledge, training, and practice meet the requirements of this part.

Proposed § 26.187(g) [Responsibilities and prohibitions] would be added to specify the responsibilities of SAEs within a licensee's or other entity's FFD program and their limitations.

Proposed § 26.187(g)(1) would specify at least three circumstances in which the SAE would be responsible for making a determination of fitness under the proposed rule. In proposed § 26.187(g)(1)(i), an SAE may be called upon to make a determination of fitness regarding an applicant for authorization when the self-disclosure, the suitable inquiry, or other sources of information identify potentially disqualifying FFD information about the applicant. In proposed § 26.187(g)(1)(ii), an SAE may be called upon to make a determination of fitness when an individual has violated the substance abuse provisions of a licensee's or other entity's FFD policy, including, but not limited to a first confirmed positive drug test result. Related provisions in proposed § 26.69 [Authorization with potentially disqualifying FFD information] would require the licensee or other entity to rely upon the results of the SAE's determination of fitness when making a decision to grant or maintain an individual's authorization and implement any recommendations from the SAE for treatment and followup testing. In proposed § 26.187(g)(1)(iii), an SAE may be called upon to make a determination of fitness when there is a concern that an individual may be impaired as a result of the use of prescription or over-the-counter medications, or alcohol. Related provisions in proposed § 26.77 [Management actions regarding possible impairment] would require the licensee or other entity to rely upon the results of the SAE's determination of fitness when determining whether an individual may perform job duties that require the individual to be subject to this part. Therefore, the proposed paragraph would be added for consistency with other, related provisions in the proposed rule.

Proposed § 26.187(g)(2) would be added to require the SAE to act as a referral source to assist an individual's entry into an appropriate treatment or education program and prohibit the SAE from engaging in any activities that could create the appearance of a conflict of interest. Proposed § 26.187(g)(2)(i) would prohibit the SAE from referring an individual to any organization with whom the SAE has a financial relationship, including the SAE's private practice, to avoid creating the appearance of a conflict of interest. However, proposed § 26.187(g)(2)(ii)(A)–(g)(2)(ii)(D) would specify circumstances in which the prohibition in proposed § 26.187(g)(2)(i) would not apply. In general, the proposed rule would permit the SAE to refer an individual to an entity with whom the SAE has a financial relationship in situations where treatment and educational resources may be limited by cost considerations or geographical availability. These proposed provisions would be necessary to ensure that the SAE's determinations are not influenced by financial gain and that individuals who are subject to the rule and the public can have confidence in the integrity and independence of the SAE function in Part 26 programs.

Section 26.189 Determination of Fitness

Proposed § 26.189 [Determination of fitness] would be added to present together in one section and amend current requirements related to the determination that an individual is fit to safely and competently perform the job duties that require individuals to be subject to this part. The terms, ''medical assurance'' and ''medical determination of fitness,'' used in various sections of the current rule [*e.g.*, § 26.27(a)(3), (b)(2) and (b)(4)] would be replaced with the term, ''determination of fitness,'' as defined in this proposed section. This proposed change in terminology would be made because the rule would permit healthcare professionals other than licensed physicians to conduct determinations of fitness, as discussed with respect to proposed § 26.187 [Substance abuse expert]. Therefore, the proposed change would meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.189(a) would be added. The first sentence of the proposed paragraph would define the term, ''determination of fitness.'' This term would refer to the process followed to determine whether there are indications that an individual may be in violation of the licensee's or other entity's FFD policy or is otherwise unable to safely and competently perform his or her duties.

In general, the proposed rule would require that professionals who perform determinations of fitness must be qualified and possess the requisite clinical experience, as verified by the licensee or other entity, to assess the specific fitness issues presented by an individual whose fitness may be questionable. The proposed approach to designating the healthcare professionals who may conduct a determination of fitness focuses on the appropriateness of the professional's expertise for addressing the subject individual's fitness issue, rather than on the professional's organizational affiliation [see the discussion of proposed § 26.69(b)(4)] or whether the individual is a licensed physician. Therefore, proposed § 26.189(a)(1)–(a)(5) would provide examples of the healthcare professionals who would be qualified to address various fitness issues that may arise in a FFD program. When a decision must be made to determine whether an individual may be granted or maintain authorization and a substance abuse disorder is involved, only professionals who meet the requirements to serve as an SAE would be permitted to make determinations of fitness under proposed § 26.189(a)(1). The proposed rule would permit other healthcare professionals to perform determinations of fitness that involve assessing and diagnosing impairment from causes other than substance abuse, such as clinical psychologists in proposed § 26.189(a)(2), psychiatrists in proposed § 26.189(a)(3), physicians in proposed § 26.189(a)(4), or an MRO in proposed § 26.189(a)(5), consistent with their professional qualifications. The proposed rule would also permit other licensed and certified professionals who are not listed in the proposed paragraph, such as registered nurses or physicians' assistants who have the appropriate training and qualifications, to perform a determination of fitness regarding specific fitness issues that are within their areas of expertise. However, the critical tasks of assessing the presence of a substance abuse disorder, providing input to authorization decisions, and developing treatment plans would be reserved for healthcare professionals who have met the specific training, clinical experience, and knowledge requirements for an SAE under proposed § 26.187 [Substance abuse expert] for the reasons discussed with respect to that proposed section.

The proposed rule would also prohibit healthcare professionals who may conduct a determination of fitness for a Part 26 program from addressing fitness issues that are outside of their specific areas of expertise, consistent with the ethical standards of healthcare professionals' disciplines as well as State laws. The proposed rule would add this prohibition to clarify that the ethical standards and State laws also apply to making determinations of fitness under Part 26 because a determination of fitness conducted by a professional who is not qualified to address the specific fitness issue would be of questionable validity. Therefore, the proposed prohibition would be necessary to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs, as well as Goal 7, which is to

protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.189(b)(1)–(b)(4) would list and present together the circumstances in which a determination of fitness must be performed, as required in other sections of the proposed rule. Although this proposed paragraph would be redundant with other sections of the proposed rule, these circumstances would be listed in the proposed paragraph to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, by grouping related requirements together in the order in which they would apply to licensees' and other entities' FFD processes.

Proposed § 26.189(b)(1) would reiterate the requirement in current Section 2.9(f) in Appendix A to Part 26 and proposed § 26.185(k) that a determination of fitness must be performed when there is a medical explanation for a non-negative test result, but a potential for impairment exists. For example, legitimate use of some psychotropic medications or medications for pain relief may cause impairment in some individuals and it may be necessary to limit the types of tasks the individual performs until the medication is no longer necessary, or the person adjusts to its effects.

Proposed § 26.189(b)(2) would reiterate requirements in current § 26.27(b)(1) and (b)(4) and proposed § 26.69(b) [Authorization after a first confirmed positive drug or alcohol test result or a 5-year denial of authorization] that a determination of fitness must be performed before an individual is granted authorization following an unfavorable termination or denial of authorization for a violation of a licensee's or other entity's FFD policy.

Proposed § 26.189(b)(3) would reiterate the requirement in proposed § 26.69(c) [Granting authorization with other potentially disqualifying FFD information] that a determination of fitness must be performed before an individual is granted authorization when potentially disqualifying FFD information is identified that has not been previously addressed and resolved under a Part 26 FFD program.

Proposed 26.189(b)(4) would address other circumstances in which a determination of fitness may be required. For example, a determination of fitness may be necessary if an FFD concern has been raised regarding another individual, as required in proposed § 26.27(c)(4), and if a licensee's or other entity's reviewing official requires one, in accordance with proposed § 26.69(c)(3) and (d)(2).

Proposed § 26.189(c) would be added to establish requirements for a determination of fitness that is conducted ''for cause.'' Specifically, proposed § 26.189(c) would require that a determination of fitness that is conducted for cause must be conducted through face-to-face interaction to ensure that the professional who is performing the determination has available all of the sensory information that may be required for the assessment, such as the smell of alcohol or the individual's physical appearance. The immediacy of the decision would limit the amount of information that could be gathered and made available to the professional by others. Conversely, the proposed paragraph would not require that determinations of fitness for other purposes be conducted face-to-face. These other purposes may include, but would not limited to, the determination of fitness that would be required when an applicant for authorization has self-disclosed potentially disqualifying FFD information. Determinations of fitness in these other circumstances would focus primarily on historical, rather than immediate, information. The professional would have access to information that could be gathered by others about the individual, and no time urgency would be involved in the evaluation. Therefore, the proposed paragraph would be added to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs, by requiring a face-to-face assessment in some circumstances where electronic means of communication could not provide the requisite information for the evaluation, and permitting other means of conducting the assessment when those means provide increased flexibility to licensees and other entities while continuing to achieve the goal of the evaluation.

Proposed § 26.189(c)(1)–(c)(4) would be added to specify the required outcomes of a for-cause determination of fitness. The proposed rule would provide an increased level of detail in these requirements to increase consistency in implementing the for-cause determination of fitness process among FFD programs for the reasons discussed with respect to proposed § 26.187 [Substance abuse expert].

Proposed § 26.189(c)(1) would require that, if there is neither conclusive evidence of an FFD policy violation nor a significant basis for concern that the individual may be impaired while on duty, then the individual must be determined to be fit for duty and the licensee or other entity must permit the individual to perform the job duties that require the individual to be subject to this part.

Proposed § 26.189(c)(2) would require that, if there is no conclusive evidence of an FFD policy violation, but there is a significant basis for concern that the individual may be impaired while on duty, then the individual must be determined to be unfit for duty. Such a determination would not constitute a violation of Part 26 or the licensee's or other entity's FFD policy; therefore, no sanctions would be applied. Examples of circumstances in which an individual may be determined to be unfit under the proposed paragraph could include a temporary illness, such as a severe migraine headache, or transitory but severe stress in a personal relationship. These circumstances may impact an individual's ability to work safely for a short period, but would have no implications for the individual's overall fitness to perform the job duties that require the individual to be subject to this part. In addition, the proposed rule would require the professional who conducts the determination of fitness to consult with the licensee's or other entity's management personnel to identify and implement any necessary limitations on the impaired individual's activities to ensure that the individual's condition would not affect workplace or public health and safety. If appropriate, the individual may be referred to the EAP for assistance.

Proposed § 26.189(d) would be added to prohibit licensees and other entities from seeking a second determination of fitness if a determination of fitness under Part 26 has already been performed by a qualified professional who is employed by or under contract to the licensee or other entity. The proposed paragraph would also require that the professional who made the initial determination must be responsible for modifications to the initial determination based on new or additional information. If the initial professional is no longer available, then the licensee or other entity would be required to assist in arranging for consultation between the new professional and the professional who is no longer employed by or under contract to the licensee or other entity. The proposed paragraph would be necessary to ensure consistency and continuity in the treatment of an individual who may be undergoing treatment, aftercare, and followup testing.

Subpart I—Managing Fatigue

Section 26.195 Applicability

A new § 26.195 [Applicability] would be added to specify the licensees and other entities to whom the requirements in proposed Subpart I would apply. Proposed Subpart I would apply only to licensees who are authorized to operate a nuclear power reactor (under § 50.57 of this chapter) and holders of a combined license after the Commission has made the finding under § 52.103 of this chapter, as specified in proposed § 26.3(a), and C/Vs who implement FFD programs or program elements upon which such licensees rely, as specified in proposed § 26.3(d).

As discussed in Section IV. D, the proposed rule would require nuclear power plant licensees to implement the requirements in Subpart I for the following reasons:

(1) Fatigue and decreased alertness can substantively degrade an individual's ability to safely and competently perform his or her duties;

(2) Conditions that contribute to worker fatigue are prevalent in the U.S. nuclear power industry;

(3) With the exception of NRC orders limiting the work hours of security personnel, the NRC's current regulatory framework does not include consistent requirements to prevent worker fatigue from adversely impacting safe operations and enforcement of the current requirements is complex;

(4) Reviews of nuclear power plant licensees' controls on work hours have repeatedly identified practices that are inconsistent with the NRC's Policy on Worker Fatigue, including excessive work hours and the overuse of work-hour limit deviations;

(5) The current regulatory framework is comprised of requirements that are inadequate and incomplete for effective fatigue management;

(6) Ensuring effective management of worker fatigue through rulemaking would substantially enhance the effectiveness of FFD programs, but additional orders are not presently warranted to ensure adequate protection of public health and safety or the common defense and security; and

(7) Preventing the fatigue of workers in safety-critical positions through regulation is consistent with practices in foreign countries and other industries in the U.S.

The proposed requirements also would apply to C/Vs who implement FFD programs or program elements, to the extent that nuclear power plant licensees rely upon those C/V FFD programs or program elements to meet the requirements of this part. This proposed provision would permit licensees to rely on a C/V's fatigue management program, consistent with the permission for licensees to rely on licensee-approved FFD programs and program elements in current § 26.23(a), as retained in proposed § 26.3 [Scope].

Proposed Subpart I would not apply to the materials licensees who are otherwise subject to Part 26 (see proposed § 26.3 [Scope]) for two reasons. First, NRC analyses have indicated that significant offsite radiological exposure is not a realistic accident consequence at a materials facility that is subject to Part 26 regulations because of the nature of the radioactive materials that are involved and the multiple layers of controls that are required under NRC regulations. Second, there is no evidence of excessive overtime use by the materials licensees who are subject to Part 26. Therefore, applying the requirements in Subpart I to these licensees would be unnecessary. The costs associated with establishing work hour controls to meet the proposed Subpart I requirements would not be commensurate with a corresponding benefit to the protection of public health and safety and the environment. However, requirements to prevent fatigue from adversely affecting the job performance of security personnel at materials facilities may provide a substantial enhancement to the security of these facilities. In SRM–COMSECY–04–0037, dated September 1, 2004, the Commission determined that FFD enhancements related to the fatigue of security force personnel at Independent Spent Fuel Storage Installations, Decommissioning Reactors, Category I Fuel Cycle Facilities, Gaseous Diffusion Plants, and the Natural Uranium Conversion Facility should be pursued as a separate rulemaking activity with additional stakeholder interactions. That activity is scheduled to begin in FY 2006. Publication of a proposed rule related to fatigue of security forces for these materials facilities would not occur until the final rule is published from this rulemaking.

Section 26.197 General Provisions

Proposed § 26.197 [General provisions] would be added to establish fatigue management requirements for licensees' FFD programs. The general provisions in this section would establish requirements for licensees' fatigue management policies, procedures, training, examinations, recordkeeping, and reporting. The NRC's objective in establishing these general provisions would be to facilitate integrating fatigue management into licensees' FFD programs, as discussed in Section IV. D.

Proposed § 26.197(a) [Policy] would be added to require each licensee to have a written policy statement that describes its management's expectations and methods for managing fatigue to ensure that fatigue does not adversely affect any individual's ability to safely and competently perform his or her duties. The NRC believes that the responsibility for ensuring that each individual is fit to safely and competently perform his or her duties is shared between the licensee and the individuals who perform duties on the licensee's behalf. Therefore, the proposed rule would require each licensee's FFD policy to set forth the licensee's fatigue management policy, so that individuals who are subject to it will be aware of and may comply with the fatigue management requirements for which they will be held accountable. The proposed rule would require each licensee to incorporate the fatigue management policy statement into the written FFD policy that would be required under proposed § 26.27(b). As discussed with respect to proposed § 26.27(b), the proposed rule would require the policy statement to be clear, concise, and readily available, in its most current form, to all individuals who are subject to the policy.

The NRC's past experience with worker fatigue, such as that documented in NRC Regulatory Issue Summary (RIS) 2002–007, Clarification of NRC Requirements Applicable to Worker Fatigue and Self-declarations of Fitness-For-Duty, dated May 10, 2002, (referred to in this document as RIS 2002–007), indicates that there is a need for individuals to clearly understand their fatigue management responsibilities and those of the licensee. These responsibilities would include the individual's responsibility to report FFD concerns, including concerns related to the impact of fatigue on the individual's ability to safely and competently perform his or her job duties, as well as concerns related to others, and the licensee's responsibility to assess such fatigue-related FFD concerns. Further, the proposed rule would not prohibit licensees from imposing sanctions on individuals for failing to comply with the portions of the licensees' fatigue management policies that assign certain responsibilities to individuals. For example, some licensees may impose sanctions on an individual who fails to seek recommended treatment for a sleep disorder that, as part of a determination of fitness performed in accordance with proposed § 26.189 [Determination of fitness], a healthcare professional has

determined is adversely affecting the individual's job performance and potentially could be medically resolved. The proposed rule would not establish minimum sanctions for individual failures to comply with such fatigue management requirements because the reasons that an individual may report to work in a fatigued state are varied and often highly personal. Rather, the NRC prefers to permit licensees and the appropriate healthcare professionals to respond to such circumstances on a case-by-case basis. However, in order to protect individuals' rights to due process under the rule, it would be necessary for licensees' fatigue management policies to communicate any sanctions that a licensee may impose on an individual for failing to comply with the policy's requirements.

Proposed § 26.197(b) [Procedures] would be added to require licensees to develop, implement, and maintain procedures to implement the fatigue management policy that would be required under proposed § 26.197(b). Procedures would be necessary to ensure that licensees' fatigue management programs are properly and consistently implemented.

Proposed § 26.197(b)(1) would require licensees to develop, implement, and maintain procedures that describe the process to be followed any time an individual who is subject to the licensee's FFD program reports to a supervisor that he or she is unfit for duty because of fatigue (*i.e.*, makes a self-declaration). The NRC previously noted in RIS 2002–007 that self-declaration is an important adjunct to behavioral observation in meeting the requirements of the performance objective in current § 26.10(b) [as retained in proposed § 26.23(c)], which is ''to provide reasonable measures for the early detection of persons who are not fit to perform the job duties that require them to be subject to this part.'' Because individuals are the first line of defense against the potential for fatigue-related impairment to adversely affect their job performance, it is essential that all individuals who are subject to a licensee's FFD program understand when and how to make a self-declaration that they are unfit for duty. Individuals must also understand how the licensee's response to a worker's self-declaration will differ from a licensee's response to an individual's general statement of fatigue (*e.g.*, casually commenting to a co-worker, ''I'm really tired today''), if the individual does not express a concern that is specific to his or her fitness for duty (*e.g.*, formally stating to a supervisor, ''I am too tired right now to check these valve lineups accurately'').

Proposed § 26.197(b)(1)(i) would require the licensee's self-declaration procedure to describe the responsibilities of individuals and licensees and the actions they must take with respect to an individual's self-declaration of fatigue. The NRC has considered industry experience with individuals refusing to report to work on the basis that they were too tired, and has concluded that detailed procedures are necessary to specify: (1) The individual's responsibility to be available at work for a fatigue assessment, which must be conducted face-to-face under proposed § 26.201(b) for the reasons discussed with respect to that paragraph; (2) the individual's responsibility to cooperate with the fatigue assessment process by providing the necessary information [see the discussion of proposed § 26.201(c)(2)]; and (3) the licensee's responsibility for conducting a fatigue assessment in response to an individual's self-declaration, as required under proposed § 26.201(a)(2), to determine whether, and under what controls and conditions, if any, the individual may be permitted or required to work.

Proposed § 26.197(b)(1)(ii) would require the licensee's self-declaration procedure to describe requirements for establishing controls and conditions under which an individual may be permitted or required to perform work after that individual declares that he or she is not fit for duty as a result of fatigue. This portion of the procedure would be necessary to ensure correct and consistent implementation of the requirements in proposed § 26.201(b), which would require that a supervisor or staff member of the FFD program must conduct the fatigue assessment and make a determination whether, and under what conditions, an individual who has self-declared may be returned to duty. For example, the licensee's procedure would provide guidance on establishing appropriate controls and conditions under which an individual could be permitted or directed to return to work after declaring that he or she is unfit because of fatigue. Controls and conditions may include, but would not be limited to: (1) Controls on the type of work to be performed (*e.g.*, physical or mental, tedious or stimulating, individual or group, risk-significant or not); (2) the required level of supervision (continuous or intermittent) and other oversight (*e.g.*, peer checks, independent verifications, quality assurance reviews, and operability checks); and (3) the need to implement fatigue countermeasures (*e.g.*, naps, rest breaks). The purpose of the controls and conditions would be to mitigate the risks to public health and safety or the common defense and security that a fatigue-induced human error could pose, as discussed in Section IV. D.

Proposed § 26.197(b)(1)(iii) would be added to require licensee procedures to describe the processes to be followed if an individual disagrees with the results of a fatigue assessment that was conducted in response to the individual's self-declaration. These procedures would address situations in which the individual disagrees with the licensee's determination either that the individual is capable of performing work safely (with appropriate controls and conditions, if necessary) or that the individual cannot safely be permitted to perform the job duties listed in proposed § 26.199(a) because of fatigue. For example, the licensee's procedure may refer an individual who disagrees with the outcome of the fatigue assessment to the bargaining unit to initiate a grievance process, the employee concerns program, or the corrective action program.

The proposed rule would add this requirement for several reasons. First, in RIS 2002–007, the NRC documented concerns associated with past instances of self-declaration. The NRC believes that these instances indicated the need for licensees to describe the processes to be followed if an individual disagrees with the results of a fatigue assessment following a self-declaration. In addition, at the public meetings discussed in Section V, several stakeholders requested that this provision be added to the proposed rule to ensure that individuals have recourse if they disagree with the results of a fatigue assessment that was conducted in response to a self-declaration. Some of the stakeholders expressed a concern for the potential impact on public health and safety if an individual is convinced that he or she is too fatigued to perform work safely but the licensee requires the individual to work. Other stakeholders expressed concerns that an individual may experience adverse employment and financial consequences if he or she is prevented from working because of fatigue.

The NRC concurs that licensee policies and procedures related to implementing the requirements of this proposed subpart must address these potential issues in order to protect the due process rights of individuals who would be subject to the rule. However, the proposed rule would not establish specific requirements for the process(es) to be followed in such instances for two reasons: (1) Licensees have already

implemented a number of processes for addressing similar safety and employment issues that provide appropriate mechanisms for resolving fatigue-related issues, and (2) there is such a wide variety of possible issues that may arise that establishing one mechanism in the proposed rule could not be expected to appropriately address them all. Therefore, the proposed rule would require licensees to have procedures for addressing situations in which an individual who has self-declared disagrees with the outcome of a fatigue assessment, but would not require a new process nor specify the required characteristics of the process(es) the licensees would use.

Proposed § 26.197(b)(2) would be added to require that licensee procedures must describe the process for implementing the work hour controls that would be required under proposed § 26.199 [Work hour controls]. For example, the procedures would detail individual and organizational responsibilities and requirements, including items such as: Scheduling; tracking and calculating work hours; granting waivers of the individual work hour controls; reviewing the implementation of the work hour controls; documenting the results of the reviews; and implementing any necessary corrective actions. These procedures would be necessary to ensure that individuals understand the work hour controls to which they are subject and that licensees consistently implement the work hour controls required in proposed § 26.199 and as the NRC intends.

Proposed § 26.197(b)(3) would be added to require that licensee procedures must describe the process(es) to be followed in conducting a fatigue assessment, as required under proposed § 26.201(a). The proposed procedures would establish the methods through which the licensee would determine whether an individual who may be fatigued will be permitted or required to perform work and whether controls and conditions are necessary for the individual to be able to perform work safely and competently. The licensee's procedure would address fatigue assessments that are conducted following an individual's self-declaration, an event, for cause, or to reassess an individual after returning the individual to work despite a self-declaration of fatigue [the situations in which the proposed rule would require licensees to conduct fatigue assessments are discussed with respect to proposed § 26.201(a)]. Because of the potentially subjective and personal nature of the fatigue assessment task and the potential for conflict and sanctions (*e.g.*, if an individual is determined to have been asleep while on duty), comprehensive procedures would be necessary to ensure consistent implementation of the fatigue assessment requirements in proposed § 26.201 [Fatigue assessments]. Therefore, the NRC expects that these procedures would describe measures to ensure that fatigue assessments: (1) Are performed by properly trained personnel; (2) are free of bias; (3) methodically address the factors that commonly contribute to fatigue; (4) are based on complete and accurate information; (5) protect the privacy of the individuals being assessed; (6) recognize the fact that an individual may be fatigued and unfit for duty even though he or she has not exceeded the work-hour limits; (7) are thoroughly documented; and (8) are reviewed, as required by proposed § 26.199(j)(1). These procedures would be necessary to implement the proposed requirements in this subpart and protect the due process and privacy rights of individuals, consistent with Goal 7 of this rulemaking.

Proposed § 26.197(b)(4) would be added to require licensees to describe in a procedure the sanctions they may impose on individuals, if any, following a fatigue assessment (*e.g.*, termination or leave without pay). During the public meetings discussed in Section V, several industry representatives indicated that licensees may rely upon the results of a fatigue assessment as the basis for determining that an individual has not met management expectations for maintaining his or her fitness for duty. Although the NRC neither endorses nor prohibits the imposition of sanctions in cases of fatigue, licensees have an obligation to provide due process to individuals who are subject to their FFD policy. For this reason, procedures would be necessary to ensure that licensees fully disclose the conditions under which sanctions would be considered; the nature of the possible sanctions; and the process for administering and imposing the sanctions, including management's expectations and the individual's right to a review of the determination that he or she has violated the FFD policy, as required under proposed § 26.39 [Review process for fitness-for-duty policy violations].

Proposed § 26.197(c) [Training and examinations] would establish additional fatigue-related training and examination requirements, in addition to those required under proposed § 26.29(a) and (b). Several of the knowledge and abilities (KAs) requirements that are listed in proposed § 26.29(a) would ensure that individuals are familiar with a licensee's or other entity's fatigue policies and procedures, which may include the consequences of violating them under proposed § 26.29(a)(1), and individuals' and others' responsibilities under the licensee's FFD program in proposed § 26.29(a)(2) and (a)(3). However, individuals who would be subject to Subpart I should also have a working-level knowledge of specific, fatigue-related topics that may facilitate personal decisions and actions that are consistent with the objective of preventing, detecting, and mitigating the adverse effects of fatigue on worker job performance. Individual workers typically do not possess these KAs without training (Folkard and Tucker, 2003; Knauth and Hornberger, 2003; Monk, 2000). Therefore, the proposed rule would require licensees to address the topics specified in proposed § 26.197(c)(1) and (c)(2) in their FFD training and testing programs.

Proposed § 26.197(c)(1) would require FFD training and examinations to ensure that individuals who are subject to the proposed subpart understand the contributors to worker fatigue, circadian variations in alertness and performance, indications and risk factors for common sleep disorders, shiftwork strategies for obtaining adequate rest, and the effective use of fatigue countermeasures. Examples of topics that licensee training and examinations would address that are related to this KA would include, but are not limited to: (1) The principal factors that influence worker fatigue; (2) knowledge that a worker's ability to perform and remain alert is influenced by physiological changes that follow a daily pattern; (3) the time periods during which workers are most likely to exhibit degraded alertness and performance; (4) the principal symptoms of common sleep disorders (*e.g.*, sleep apnea and insomnia) and the conditions that can contribute to their onset; (5) the methods for optimizing sleep periods on a shiftwork schedule; and (6) how to safely and effectively counteract fatigue with measures such as caffeine and strategic napping. Knowledge of these topics is necessary to ensure that individuals are able to: (1) Self-manage fatigue that is caused by shiftwork and factors other than work hours; (2) take actions to maintain their alertness at work; and (3) recognize and seek treatment for sleep disorders that might be creating or exacerbating their own fatigue. In addition, training in methods for coping with the challenges of shiftwork may contribute to a more

stable workforce by reducing worker turnover. A survey by Circadian Technologies Incorporated of 550 facilities in the U.S. and Canada found that turnover at facilities with operations extending beyond 7 a.m. to 7 p.m. averaged 10 percent in 2003, compared with 3.4 percent in all U.S. companies. Facilities offering no training on specific coping strategies had an average turnover rate of 11.4 percent, compared to 7.6 percent for facilities that offered such training to their employees, and 2.9 percent for those offering the training to employees and their family members (Circadian Technologies Incorporated, 2004).

Proposed § 26.197(c)(2) would require FFD training and examinations to ensure that individuals who are subject to proposed Subpart I have the ability to identify symptoms of worker fatigue and contributors to decreased alertness in the workplace. Examples of topics that are related to this KA would include, but are not limited to: (1) Behavioral symptoms of fatigue (*e.g.*, yawning, red-eyes, prolonged or excessive blinking, irritability); (2) task conditions that may contribute to degraded alertness and increased fatigue (*e.g.*, repetitive tasks, tasks with high cognitive or attentional demands, tasks that require the individual to be sedentary, tasks that limit social interaction); and (3) environmental conditions that may contribute to degraded alertness and increased worker fatigue (*e.g.*, high heat and humidity, low lighting, and low frequency noise/white noise). Requiring individuals to be trained on this KA would be necessary to ensure that an individual is able to determine when it is appropriate to self-declare that he or she is unfit for duty because of fatigue, as permitted under proposed §§ 26.199(e) and 26.201(a)(2), and identify other individuals who are exhibiting indications of fatigue through behavioral observation to determine when it is appropriate to report an FFD concern about another individual, as required under proposed § 26.33 [Behavioral observation].

Proposed § 26.197(d) [Recordkeeping] would be added to establish recordkeeping requirements related to the implementation of proposed Subpart I. Specifically, proposed § 26.197(d)(1) would require licensees to retain records of the number of hours worked by individuals who are subject to the work hour controls established in proposed § 26.199 [Work hour controls]; proposed § 26.197(d)(2) would require licensees to retain records of the number of waivers they have granted and the bases for those waivers; proposed § 26.197(d)(3) would require licensees to retain documentation of the work hour reviews that would be required under proposed § 26.199(j)(3); proposed § 26.197(d)(4) would require retaining documentation of any fatigue assessments that would be conducted, as required by proposed § 26.201(g); and proposed § 26.197(d)(5) would require licensees to retain documentation of each job duty group's collective work hours. The proposed rule would establish these recordkeeping requirements for four reasons: (1) These records would be necessary to ensure that documentation of the licensee's fatigue management program is retained and available for NRC inspectors to verify that licensees are complying with the proposed work hour controls, and waiver and fatigue assessment provisions; (2) the documentation may be necessary for a review process under proposed § 26.39 [Review process for fitness-for-duty policy violations] or in legal proceedings related to a determination that an individual has violated the fatigue provisions of an FFD policy; (3) the documentation would be necessary to perform the trending and self-assessments that would be required under proposed § 26.199(j) [Reviews]; and (4) the documentation would be necessary to meet the reporting requirements in proposed § 26.197(e) [Reporting]. In order to ensure that the records remain available for NRC inspections and for the review process or legal proceedings, the proposed paragraph would require licensees to retain these records for 3 years or until the completion of any related legal proceedings, whichever is later.

Proposed § 26.197(e) [Reporting] would be added to require licensees to report to the NRC certain data related to their fatigue management programs as part of the annual FFD program performance report, which licensees would be required to submit under proposed § 26.217 [Fitness-for-duty program performance data]. The proposed rule would require licensees to include the following information in the annual report: (1) Information on the number of waivers granted from work hour controls from the previous calendar year; (2) the collective work hours for any job duty group whose average work hours exceeds 48 hours per week; and (3) the number of fatigue assessments conducted during the year, the management actions that resulted, and the conditions under which the fatigue assessments were conducted. The NRC would use the information in these annual reports for several purposes.

The primary reason for requiring licensees to submit this information annually would be that, as discussed in Section IV. D, certain nuclear power plant licensees have permitted individuals to work hours that are significantly in excess of those intended under the NRC's Policy on Worker Fatigue and abused the waiver provisions of the Policy by granting blanket waivers to large groups of plant personnel for extended periods of time. It is the intent of the requirements in proposed Subpart I to ensure that such abuses do not recur under the proposed rule. However, the NRC does not have the resources to inspect every licensee's fatigue management program each year and collect this information by relying solely on NRC inspection personnel. Therefore, the proposed requirement for licensees to submit this information would be necessary to ensure that it would be available for the NRC's review and evaluation to identify licensees whose fatigue management programs do not appear to be meeting the objectives of this proposed subpart.

In addition, the proposed reports would permit the NRC to more efficiently focus its inspection resources on those licensees' fatigue management programs that do not appear to be meeting the objectives of this proposed subpart, and thereby maximize the efficiency of the inspection process. Obtaining information about significant fatigue-management issues and events (*e.g.*, events resulting in fatigue assessments, or plant events occurring while work hour limits are waived) would permit the NRC to evaluate situations that may indicate inadequate licensee performance. Inadequate licensee performance may require action by the NRC staff to ensure that public health and safety and the common defense and security are not compromised.

The NRC also requires the information to: (1) Track the effectiveness of the requirements of proposed Subpart I in controlling the fatigue of nuclear power plant workers; (2) assess whether the objectives of the proposed requirements are being achieved; and (3) determine whether any further changes to the requirements are necessary to ensure that worker fatigue is managed consistent with the intent of the provisions. As a hypothetical example, if analyses of the data obtained from the annual reports show that, across the industry, (1) licensees generally grant significantly more waivers for operations personnel than any other job duty groups, (2) operations job duty groups exceed the 48-hour per person per week work

group average limit significantly more often than any other job duty groups, and (3) operations personnel are subject to more for-cause fatigue assessments than individuals in any other work groups, the NRC may determine that it is necessary to further evaluate the causes for these findings and potentially revise the requirements of Subpart I as they relate to the operations job duty group.

In summary, because the information that licensees would be required to report would be central to assessing licensee performance, efficiently allocating NRC inspection resources, and evaluating the effectiveness of the proposed Subpart I requirements, the reporting burden that these requirements would impose on licensees is warranted. However, the NRC expects that the additional burden associated with the proposed requirements for licensees to add this information to their annual reports would be minimal because proposed § 26.199(j) [Reviews] would require licensees to aggregate and review this information after each averaging period for the reasons discussed with respect to that proposed provision. Therefore, the proposed requirement to include the information in the annual FFD program performance report would not impose a significant additional burden.

Proposed § 26.197(e)(1) would require licensees to provide the NRC with an annual summary of the number of instances during the previous calendar year in which the licensee waived each of the work hour controls specified in proposed § 26.199(d)(1) and (d)(2) for each of the job duty groups listed in proposed § 26.199(a). (Waivers of the work hour controls in proposed § 26.199(d)(1) and (d)(2) would be permitted under proposed § 26.199(d)(3) for the reasons discussed with respect to proposed § 26.199(d)(3).) For example, if a licensee granted 10 waivers to one operator that permitted him or her to work 18 hours in a 24-hour period [see proposed § 26.199(d)(1)(i)] on 10 separate occasions during the calendar year, the licensee would report that the work hour limit in proposed § 26.199(d)(1)(i) was waived 10 times in the operations job duty group that year. The job duty groups who would be subject to work hour controls are discussed with respect to proposed § 26.199(a). Similarly, if the licensee granted one waiver to each of 10 different operators to permit the operators to work 18 hours in a 24-hour period, the licensee would also report that the work hour limit in proposed § 26.199(d)(1)(i) was waived 10 times in the operations job duty group that year. As another example, if the licensee permitted an operator to work 18 hours in a 24-hour period three times in a year, another operator to work 80 hours in a 7-day period, and another operator to take a rest break of only 6 hours between shifts, then the licensee would report that the operations job duty group was granted three waivers of proposed § 26.199(d)(1)(i), one waiver of proposed § 26.199(d)(1)(iii), and one waiver of proposed § 26.199(d)(2)(i) for the year.

As a fourth and more complex example, if a licensee permitted an operator who normally works 12-hour shifts to work a seventh 12-hour consecutive shift, followed by a second waiver on the eighth day to work another 12-hour shift, then the licensee would report multiple waivers. In this example, on the seventh day, the licensee would grant one waiver of proposed § 26.199(d)(1)(iii) for working 84 hours in a 7-day period and one waiver of proposed § 26.199(d)(2)(ii) for not receiving the required 24-hour break in a 7-day period. On the eighth day, the individual would be granted those same two waivers again. So, the licensee would report the instances on the seventh and eighth days as two waivers of proposed § 26.199(d)(1)(iii) and two waivers of proposed § 26.199(d)(2)(ii). This example presumes that the individual received the 48-hour break required by proposed § 26.199(d)(2)(iii) within the 6 days preceding day 1, otherwise additional waivers from that provision would also be required and reported.

The proposed rule would also establish additional requirements related to aggregating and reporting the waiver data, as follows:

Proposed § 26.197(e)(1)(i) would require licensees to include in the annual report only those waivers under which work was actually performed. The proposed rule would add this provision because it may sometimes be unnecessary for individuals to work the extended hours for which a licensee planned when granting a waiver. Licensees may anticipate that it will be necessary to waive one or more work hour control in proposed § 26.199(d)(1) and (d)(2) in order to complete a task, and so implement the process specified in proposed § 26.199(d)(3) for granting waivers. However, on some occasions, the work will be finished sooner than the licensee anticipated, with the result that the waiver was granted but no-one was required to work an extended work period. The proposed rule would require licensees to exclude waivers under which no work was performed from the annual report because the granting of a waiver provides would provide no meaningful information about the licensee's management of fatigue during extended work periods.

In addition, proposed § 26.197(e)(1)(ii) would require licensees to report all waivers granted of each of the work hour controls in proposed § 26.199(d)(1) and (d)(2) for each job duty group, to include all of the waivers that were granted for those instances in which a single extended work period required waiving more than one of the work hour controls. For example, if a component failure creates a condition adverse to safety, the licensee may determine that a waiver of the work hour controls for a four-person crew of maintenance technicians would be necessary to resolve the adverse safety condition in a timely manner. Assuming that the results of fatigue assessments of the individuals involved indicated that they were able to continue working, the licensee may decide to waive two of the limits on individual work hours in proposed § 26.199(d)(1) for each of four crew members to enable them to complete the repair. Therefore, depending upon the actual circumstances, proposed § 26.199(e)(1)(ii) would require the licensee's annual summary to report, for example, that waivers were granted to four maintenance technicians of the ''16 work hours in any 24-hour period'' individual work hour limit in proposed § 26.199(d)(1)(i) as well as four waivers of the ''26 work hours in any 48-hour period'' requirement in proposed § 26.199(d)(1)(ii). Although the maintenance crew may have worked for only a single extended work period, the licensee's annual summary would include all eight of the waivers that the licensee would grant in this example.

The waiver data that licensees would be required to report to the NRC under proposed § 26.197(e)(1)(i) and (e)(1)(ii) would be important because waivers represent ''assumed risk.'' For example, as discussed in Section IV. D, fatigued workers have impaired cognitive functioning, including difficulties in maintaining attention and alertness. If a licensee permits an individual to work extended hours that cause the individual to become fatigued, the individual may experience momentary lapses in attention or degraded decision-making from fatigue that could cause him or her to commit errors that may pose risks to public health and safety and the common defense and security. These performance degradations can be mitigated by establishing controls and conditions under which the individual is permitted to work, as would be required under proposed § 26.201(e). However, controls and conditions

cannot eliminate errors altogether and would reduce, but not eliminate, the potential risks to public health and safety or the common defense and security from fatigue-induced errors. The more often that a licensee permits individuals to exceed work hour limits, the more risk from fatigue-induced errors that a licensee would be assuming. The risk of fatigue-induced errors increases further when an individual is permitted to exceed more than one of the work hour limits in proposed § 26.199(d)(1)(i)–(d)(1)(iii) because of the potential for combined effects of both acute and cumulative fatigue. Any waivers from the rest breaks that would be required under proposed § 26.199(d)(2)(i)–(d)(2)(iii) would also contribute to the accumulation of a sleep deficit, especially when inadequate rest breaks are combined with long work hours. Repeated and continual use of waivers may indicate a staffing or other programmatic weakness at a site that warrants additional inspection resources. Therefore, the NRC considers the number of waivers granted from the work hour limits to be a key element of FFD program performance.

During the September 14, 2004 public meeting, NEI commented that the number of waivers granted would not give meaningful information about the health of a licensee's program. However, as discussed in Section IV. D, certain nuclear power plant licensees have granted thousands of waivers each year under the current Policy on Worker Fatigue. This level of waiver use is inconsistent with the intent of the NRC's Policy and provides a clear indication that these licensees have not been effectively managing fatigue. If a licensee continued to grant thousands of waivers each year under the requirements of this proposed subpart, the sheer number of waivers granted in this case would provide meaningful information about the licensee's fatigue management program as well as the effectiveness of these proposed requirements. In less extreme circumstances, the NRC concurs that a simple summary of the number of waivers granted during the year would not provide sufficient information for the NRC to evaluate a licensee's practices with respect to granting waivers. It is for this reason that the proposed rule would require licensees to report additional information about their fatigue management practices in the annual summary report under proposed § 26.197(e)(2) and (e)(3) to provide the contextual information necessary to properly interpret the waiver data that proposed § 26.197(e)(1) would require. When considered in conjunction with number of instances in which collective work hour limits [in proposed § 26.197(e)(2)] are exceeded and the number of fatigue assessments that a licensee conducts each year and their outcomes [in proposed § 26.197(e)(3)], the number of waivers granted in a year provides an important indicator of the health of the licensee's fatigue management program. Therefore, the proposed requirement for licensees to report the number of waivers granted each year would be necessary to: (1) Evaluate the effectiveness of the more stringent requirements for granting waivers in proposed § 26.199(d)(3), which will be discussed further with respect to that paragraph; and (2) monitor the ongoing effectiveness of licensees' fatigue management programs, when considered together with the other information that licensees would be required to report in this proposed paragraph.

Proposed § 26.197(e)(2) would be added to require licensees to report the collective work hours of any job duty group listed in proposed § 26.199(a) that exceeded the applicable collective work hour limits in any averaging period during the previous calendar year under the conditions specified in proposed § 26.199(f)(3) and (f)(5). As discussed with respect to proposed § 26.199(f)(3), the proposed rule would permit a job duty group's collective work hours to exceed 48 hours per person per week during one averaging period if all of the following conditions are met: (1) The circumstances that caused the group's collective work hours to exceed 48 hours per person per week could not be reasonably controlled; (2) the group's collective work hours did not exceed 54 hours per person per week; and (3) the additional work hours were worked only to address the circumstances that the licensee could not have reasonably controlled. Proposed § 26.199(f)(5) would also permit licensees to exceed any of the collective work hour limits in proposed § 26.199(f), if the licensee receives prior approval from the NRC of a written request to exceed the work hour limits.

Proposed § 26.197(e)(2) would require licensees to report the collective work hours of any job duty group whose collective work hours exceeded the specified collective work hour limits during the previous year because this information would be necessary for the NRC to monitor the effectiveness of licensees' ongoing compliance with the proposed collective work hour limits that would be established in proposed § 26.199(f) [Collective work hour limits]. The number of times that collective work hour limits are exceeded in a year would be indicative of a licensee's effectiveness in managing the fatigue of its workers who would be subject to the proposed requirements of proposed § 26.199. Exceeding the collective work hour limits on repeated occasions may indicate a programmatic weakness that would necessitate further NRC inspection activities to address questions related to, for example, the adequacy of licensee staffing within specific job duty groups, overall management of cumulative fatigue, or corrective actions for fatigue management weaknesses. Collectively, information concerning instances in which collective work hour limits are exceeded, in conjunction with information concerning the number of waivers granted [in proposed § 26.197(e)(1)] and the number of fatigue assessments that a licensee conducts each year and their outcomes (in proposed § 26.197(e)(3)), provide a strong indicator of the health of the licensee's fatigue management program.

The NRC believes that the additional burden of including these instances in the annual report to be minimal, as the intent of the provisions is that the collective work hour limits in proposed § 26.199(f) would be exceeded only under very infrequent circumstances. Further, the NRC considers the burden to be significantly outweighed by the need to effectively use NRC inspection resources. The proposed paragraph would limit the reporting of occasions on which a job duty group exceeds collective work hour limits to those specified in proposed § 26.199(f)(3) and (f)(5) because the proposed rule would establish other reporting requirements for other instances in which a job duty group's collective work hours may exceed the proposed collective work hour limits, as discussed further with respect to the relevant provisions.

Proposed § 26.197(e)(3) would be added to require that licensees include in the annual report the number of fatigue assessments conducted, the conditions under which each assessment was conducted [*i.e.*, whether the assessment was conducted for-cause, for a self-declaration, post-event, or as a followup, as described in proposed § 26.201(a)(1)–(a)(4)], and the management actions that resulted from each assessment. The NRC considers that the reporting of the fatigue assessments and their outcomes is similar to the reporting of drug and alcohol tests results, which is also a part of the annual report. For example, the NRC views the number of for-cause drug and alcohol tests that a licensee

conducts each year to be one indicator of the health of the licensee's behavioral observation program and its effectiveness in meeting the rule's performance objective, in proposed § 26.23(c), to provide for the early detection of individuals who are not fit to perform the job duties that require them to be subject to this part. The NRC would similarly view the number of for-cause fatigue assessments that a licensee conducts each year to be one factor indicating the health of the licensee's behavioral observation and self-declaration processes with respect to fatigue.

Collectively, the reporting of waivers that would be required in proposed § 26.197(e)(1), the number of instances in which a licensee exceeds the 48-hour per person collective work hour limit that would be required in proposed § 26.197(e)(2), and the number of fatigue assessments conducted and their outcomes that would be required in § 26.197(e)(3), would provide important information concerning the effectiveness of fatigue management at a licensee site. Together, the proposed reports would permit the NRC to: (1) Efficiently monitor the ongoing effectiveness of licensees' fatigue management programs by providing interpretable data; (2) efficiently allocate inspection resources; (3) track the effectiveness of the requirements of proposed Subpart I in controlling the fatigue of nuclear power plant workers; (4) assess whether the objectives of the proposed rule are being achieved; and (5) determine whether any further changes to the requirements would be necessary to ensure that worker fatigue is managed consistent with the intent of the provisions.

Section 26.199 Work Hour Controls

Proposed § 26.199 [Work hour controls] would be added to establish controls on the work hours of select individuals who are subject to nuclear power plant licensees' FFD programs, as follows:

Proposed § 26.199(a) [Individuals subject to work hour controls] would be added to establish the scope of individuals who would be subject to the work hour controls in proposed § 26.199. These individuals would be subject to the proposed work hour controls, in addition to the proposed training, behavioral observation, and self-declaration requirements of Subpart I that would apply to all individuals who are subject to nuclear power plant licensees' FFD programs. In determining the scope of personnel who would be subject to the proposed work hour controls, the NRC considered the burdens on individuals and licensees associated with the practical control of work hours in conjunction with the potential for individuals' work activities to affect public health and safety or the common defense and security if their performance is degraded by fatigue. The NRC also considered the nature of these individuals' work activities and work environments relative to their potential to induce or exacerbate fatigue (*e.g.*, whether the work is monotonous or the environment is not stimulating), the risk significance of the work, and the potential for other controls to prevent or mitigate the consequences of a fatigue-related error. As a result of these deliberations, the proposed rule would require that individuals who perform the types of job duties specified in proposed § 26.199(a)(1)–(a)(5) must be subject to the proposed work hour controls.

Proposed § 26.199(a)(1) would require that individuals who operate or provide onsite direction of the operation of systems and components that ''a risk informed evaluation process has shown to be significant to public health and safety'' must be subject to the proposed work hour controls in this section. In order to implement the proposed work hour controls, nuclear power plant licensees would be required to delineate the operations personnel who would be subject to the proposed work hour controls, based upon the risk significance of the safety systems and components (SSCs) being operated, including, at a minimum, personnel who are performing activities on SSCs that are determined to be significant to public health and safety. To delineate the scope of the operations job duty group, licensees could use, for example, the risk significance determination process and criteria that they currently use to meet the requirements of § 50.65(a)(4) of this chapter for assessing and managing the risk associated with maintenance activities. The work hour controls of proposed § 26.199 would typically apply to individuals who are operating or directing, while on site, the operation of SSCs that are included within the scope of an assessment required by § 50.65(a)(4). Therefore, the proposed work hour controls would apply to the individuals who most directly affect the operation of SSCs that are most important to the protection of public health and safety. Controlling the work hours of these individuals would achieve the NRC's objective to minimize the potential for fatigue-related errors in operating these risk-significant SSCs.

Licensed operators, who perform the job duties specified in proposed § 26.199(a), are responsible for correctly performing actions that are necessary for the safe operation of nuclear power plants and the mitigation of accidents at these facilities. These responsibilities include monitoring the plant for off-normal conditions and taking appropriate actions to prevent these conditions from challenging the reactor core, safety systems, and fission product barriers. The importance of licensed operator actions to the protection of public health and safety is reflected in the 10 CFR Part 55 requirements that are applicable to these individuals, including specific licensing, examination and testing, requalification, and FFD requirements. In addition to performing actions that are necessary for accident mitigation, operator actions, if performed incorrectly, can be accident initiators. The effects of fatigue on decision-making, risk-taking, communications, and other key skills were discussed in Section IV. D. Fatigued operators have an increased potential to commit errors, increasing the probability of component failures, system misalignments, and incorrect execution of accident mitigation strategies. Operator actions are highly dependent on cognitive skills (*e.g.*, attention, decision-making) that are susceptible to fatigue, and operators are frequently exposed to conditions that can induce fatigue (*e.g.*, long work hours, shiftwork). The NRC highlighted this concern in 1982 by issuing its Policy on Worker Fatigue. The policy specifically addressed the need for ''controls to prevent situations where fatigue could reduce the ability of operating personnel to keep the reactor in a safe condition.''

Despite the NRC's Policy on Worker Fatigue and subsequent technical specifications to limit operator work hours, an NRC staff review of technical specification implementation from 1997–1999 found that a significant percentage of licensed and non-licensed operators worked more the 600 hours of overtime in a year (SECY–01–0113, Attachment 1). This level of overtime is two to three times the level that is permitted for operations personnel at some foreign nuclear plants and twice the level recommended by a 1985 expert panel (NUREG/CR–4248). In addition, the NRC staff has noted that some licensees appeared to be abusing the authority to permit deviations from the technical specification limits on working hours, including deviations for operators. For example, data provided by NEI on August 29, 2000, from J. W. Davis, NEI, to G. T. Tracy (ADAMS Accession No. ML003746495), indicated that during 37 refueling outages

conducted in 1999, more than 1,800 deviations were authorized for licensed operators and more than 1,100 deviations were authorized for non-licensed operators. This frequency of deviations is inconsistent with the intent of the NRC's Policy on Worker Fatigue that deviations should be authorized only for ''very unusual circumstances.'' The failure of some licensees to limit the work hours of operations personnel, considered together with the risk significance of the activities performed by operators, indicates the need for more readily enforceable work hour limits for operators whose job duties are important to protect public health and safety.

Further, the work hour controls in proposed § 26.199 would also apply to individuals who direct risk-significant operations onsite. These individuals would include management on shift, such as shift operations management or special outage managers if those individuals provide direction to operators. Individuals to whom the work hour controls would apply also include engineers who provide onsite technical direction to operations, such as test directors or reactor engineers. These individuals perform tasks that are often highly dependent on cognitive skills (*e.g.*, problem-solving, decision-making, communications) and are susceptible to fatigue-induced errors, as described in Section IV. D. Incorrect technical direction provided to operators can significantly challenge licensed operators and increase the possibility of errors or events, especially when the direction is provided by an individual who supervises the operators, or an individual who the operator reasonably expects to have specialized technical knowledge of the system or component being operated.

Proposed § 26.199(a)(2) would be added to require the control of work hours for individuals who are maintaining, or providing onsite direction of maintenance of systems and components that ''a risk informed evaluation process has shown to be significant to public health and safety.'' To implement this proposed requirement, licensees would be required to delineate the maintenance personnel, and personnel who are directing maintenance onsite, who would be subject to the work hour controls, based upon the risk significance of the SSCs that they maintain, including, at a minimum, personnel who maintain SSCs that are determined to be significant to public health and safety. To delineate the scope of the maintenance job duty group, licensees could use, for example, the risk significance determination process and criteria that they currently use to meet the requirements of § 50.65(a)(4) of this chapter for assessing and managing the risk associated with maintenance activities. As a consequence, the work hour controls of proposed § 26.199 would typically apply to individuals who are maintaining or directing onsite the maintenance of SSCs that are included within the scope of an assessment required by § 50.65(a)(4). Therefore, the proposed work hour controls would apply to the individuals who most directly affect the maintenance of SSCs that are most important to the protection of public health and safety, which would achieve the NRC's objective to minimize the potential for fatigue-related errors in maintaining these risk significant SSCs.

Nuclear power plant maintenance personnel perform tasks that are often highly dependent on cognitive skills (*e.g.*, the ability to comprehend oral and written instructions, problem-solving, communication) that are susceptible to fatigue, as described in Section IV. D. These tasks may require extensive physical effort in high heat, humidity, and noise conditions that can exacerbate fatigue. In addition, maintenance personnel are subject to the work scheduling conditions of round-the-clock operations and emergent work conditions that also can exacerbate fatigue (*e.g.*, long work hours, unscheduled overtime, shiftwork). Compared to rested workers, fatigued maintenance personnel would have a higher probability of (1) taking longer to complete maintenance activities; (2) making errors that would increase the risk of failure of the affected SSCs to perform their function(s) or operate for their required mission time during post-maintenance testing, thus delaying their return to unrestricted service; and (3) making errors that could introduce latent defects that may not be readily detected by post-maintenance testing, but that may cause degraded reliability (*i.e.*, degraded performance or failure of the SSCs at a later time). Collectively, the effects of fatigue on the performance of maintenance personnel have the potential to decrease the availability and reliability of SSCs that are important to the protection of public health and safety. Therefore, the proposed rule would require these maintenance personnel to be subject to the proposed work hour limits to ensure that fatigue does not compromise their abilities to safely and competently perform their duties relative to the maintenance of these SSCs.

The proposed work hour controls would also apply to those who direct risk-significant maintenance onsite. For example, these individuals would include maintenance supervisors who provide direction to maintenance technicians, and engineers who provide onsite technical direction to maintenance crews, such as during key outage maintenance activities. These individuals perform tasks that are often highly dependent on cognitive skills (*e.g.*, problem-solving, decision-making, communications) that are susceptible to fatigue, as discussed in Section IV. D. Incorrect technical direction provided to maintenance technicians can significantly challenge maintenance technicians and increase the possibility of errors or events, especially when that direction is provided by an individual who supervises them, or an individual who the maintenance technician reasonably expects to have specialized technical knowledge of the system or component being maintained.

Proposed § 26.199(a)(3) would be added to require work hour controls for individuals who perform health physics or chemistry duties that are required of the on-site Emergency Response Organization (ERO) minimum shift complement. Although proposed § 26.199(f) would exempt licensees from applying the work hour controls during declared emergencies, the intent of this proposed provision would be to provide reasonable assurance that the work schedules of these individuals during non-emergency conditions ensure that fatigue does not compromise their abilities to safely and competently perform their duties should an emergency occur. NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' concluded that significant fission product releases from the bulk of the fuel can occur within 30–60 minutes after the onset of an accident. As a function of the accident and its severity, certain areas within the plant, while predictable and benign during normal operations, could present elevated levels of airborne/external radiation levels (greater that 300 Rad/hour). Additionally, industrial hazards (*e.g.*, explosive mixtures, smoke, toxic gas, oxygen deficiency) that may be immediately dangerous to life and health (IDLH) could be present. In these circumstances, health physics technicians (HPTs) support necessary plant staff actions to assess conditions, perform search and rescue missions, and take timely mitigation actions (*e.g.*, local manual operations by operators). The overall success of responding safely

and appropriately to emergencies and the protection of public health and safety depends, in part, on the ability of HPTs to safely and competently perform their emergency response duties.

Similarly, NUREG–0654, Rev. 1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' identifies the need for an on-shift chemistry/radio-chemistry emergency response capability. On-shift chemistry technician(s) provide an important component for a successful response at the onset of a radiological emergency. The independent and timely actions of the chemistry technician(s) in response to a radiological event can provide key information for assessing core status and estimating the source term of a potential release. By providing defense-in-depth support for operations personnel, chemistry technicians also assist with off-site dose calculations and ancillary radiological protection tasks, such as sampling spaces for toxic gases or explosive mixtures. Chemistry technicians may also be needed to conduct analyses for the detection of hydrogen and oxygen gas concentrations in both the reactor coolant and the containment atmosphere. These analyses support severe accident management decisions with respect to minimizing radiological release potential. As a consequence, ensuring that chemistry technicians are able to safely and competently perform their emergency response duties is essential to the overall success of responding safely and appropriately to emergencies and to the protection of public health and safety.

Proposed § 26.199(a)(4) would be added to require work hour controls for individuals who are performing the duties of a fire brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability. The proposed work hour controls would be applicable to the members of the fire brigade who are responsible for providing the control room operators and fire brigade leader with information that is critical to implementing a fire mitigation strategy to maintain safe shutdown capability for the reactor. Attachment 1 to SECY–99–140, ''Recommendation for Reactor Fire Protection Inspections,'' dated May 20, 1999, states that ''based on IPEEE results, fire events are important contributors to the reported core damage frequency (CDF) for a majority of plants. The reported CDF contribution from fire events can, in some cases, approach (or even exceed) that from internal events.'' Fire brigade members must retain their cognitive abilities to be able to determine the best way to suppress a fire to prevent additional damage to safety-related equipment; evaluate equipment affected by a fire to report to control room operators concerning equipment availability; make decisions concerning smoke ventilation to prevent the fire effects from affecting other plant operations; and coordinate fire brigade activities with control room operators.

As discussed in Section IV. D, fatigue can substantially degrade an individual's decision-making and communication abilities, cause an individual to take more risks, and maintain faulty diagnoses throughout an event. The abilities to make accurate and conservative decisions, communicate effectively, and accurately diagnose events are key to the duties of the fire brigade members who are responsible for providing the control room operators and fire brigade leader with information that is critical to implementing a fire mitigation strategy that maintains safe shutdown capability for the reactor. Degradations of these abilities could have significant consequences on the outcome of an event involving a fire. For instance, a fatigued individual could incorrectly decide to vent smoke or toxic gas to an area required for alternate shutdown, which could prevent or impair access to equipment needed for safe shutdown of the plant. In addition, a fatigued worker could incorrectly apply the wrong fire suppressant, which could affect additional equipment in the plant. Further, impaired decision-making could lead a worker to fail to properly control flooding, which could impact other needed equipment, or to incorrectly determine whether an area contains critical equipment and improperly apply a suppressant in that area. Impaired communications could also lead to incomplete disclosure of information to licensed operators in the control room, which could adversely impact the decision-making of those operators. If information known to the impaired fire brigade member is not properly communicated, operators may not initiate appropriate actions to mitigate the fire effects, or the effects of suppressant activities, on critical equipment. As a consequence, ensuring that fire brigade members who are responsible for understanding the effects of fire and fire suppressants on safe shutdown capability are able to safely and competently perform their duties is essential to the overall success of the fire mitigation strategy and the protection of public health and safety.

Further, the NRC periodically grants exemptions from requirements in 10 CFR Part 50, Appendix R [Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979] based on protection of the levels of defense in depth listed in Section II(A) of Appendix R to Part 50, which are ''To prevent fires from starting; to detect, rapidly control, and extinguish promptly those fires that do occur; to provide protection for structures, systems, and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.'' Granting these exemptions is often predicated on effective manual suppression of the fire by the fire brigade. Therefore, it is necessary to ensure that fire brigade members who are responsible for understanding the effects of fire and fire suppressants on safe shutdown capability remain rested and so are able to safely and competently perform their duties in plant events involving a fire.

Proposed § 26.199(a)(5) would be added to require work hour controls for individuals who are performing the duties of an armed security force officer, alarm station operator, response team leader, or watchperson at a nuclear power plant. Individuals who perform these duties are the members of licensees' security forces who are responsible for implementing the licensees' physical security plans. In order to ensure that these individuals are able to meet their responsibilities for maintaining the common defense and security, it is necessary to ensure that they are not subject to fatigue, which could reduce their alertness and ability to perform the critical job duties of identifying and promptly responding to plant security threats. Security personnel are the only individuals at nuclear power plants who are entrusted with the authority to apply deadly force. Decisions regarding the use of deadly force are not amenable to many of the work controls (e.g., peer checks, independent verification, post-maintenance testing) that are implemented for other personnel actions at a nuclear plant to ensure correct and reliable performance. By contrast to most other nuclear power plant job duty groups, security personnel are typically deployed in a configuration such that some have very infrequent contact with other members of the security force, or other plant personnel. A lack of social contact can exacerbate the effects of fatigue on individuals' abilities to remain alert (Horne, 1988). In addition, these deployment positions can be fixed posts where very little physical activity is

required, further promoting an atmosphere in which fatigue could transition into sleep. Many security duties are largely dependent on maintaining vigilance, whereas vigilance tasks are among the most susceptible to degradation from fatigue (Rosekind, 1997; Monk and Carrier, 2003). Finally, unlike operators, security forces lack automated backup systems that can prevent or mitigate the consequences of an error caused by fatigue. For these reasons, and in light of the excessive hours that some security force personnel were required to work following the elevated threat condition(s) in effect since the terrorist attacks of September 11, 2001, the Commission issued Orders for Compensatory Measures Related to Fitness-for-Duty Enhancements Applicable to Nuclear Facility Security Force Personnel on April 23, 2003. The security force personnel who are subject to work hour controls in the Orders would be the same individuals who would be subject to the proposed work hour controls in this section.

Proposed § 26.199(b) [Calculating work hours] would be added to specify the time periods that licensees would include when calculating the work hours of the individuals listed in proposed § 26.199(a) for the purposes of this subpart. The NRC's Policy on Worker Fatigue established guidelines for the control of work hours but did not define the concept of ''work hours'' or establish criteria for calculating them. As a consequence, licensees have inconsistently defined and calculated work hours when implementing the Policy through their technical specifications and administrative procedures. This inconsistency has contributed to some licensees permitting individuals to work excessive hours that caused them to become fatigued. Therefore, the proposed rule would define work hours and requirements for calculating them to ensure consistent implementation of the work hour controls established in this proposed section.

Proposed § 26.199(b)(1) [Individual work hours] would be added to specify those portions of a shift that a licensee must include in work hour calculations. The proposed rule would define ''work hours'' as the amount of time that an individual performs any duties for a licensee who is subject to this section, including all within-shift break times and rest periods during which there are no reasonable opportunities or accommodations appropriate for restorative sleep, but excluding shift turnover.

The proposed rule specifically would not limit the definition of work hours to hours that are assigned to an individual by the licensee, that are worked on site, or that are worked as part of a scheduled shift, but rather would require licensees to include hours during which an individual performs any duties for the licensee. The proposed rule defines work hours in this broad manner because the NRC is aware that some licensees permit individuals to perform duties on behalf of the licensee from off-site locations and during periods when the individual is not assigned to a shift or scheduled by the licensee to be working on site. For example, because of the large amount of administrative work that is frequently assigned to individuals in the shift manager role, some shift managers stay at work to review and act upon administrative matters after the end of their scheduled shifts in order to complete the reviews and meet deadlines. Anecdotal reports from these individuals have indicated that they may work for 3–4 hours after going off shift to manage their workload, with the result that the hours they have available for personal obligations and, often, sleep are reduced. If the proposed rule limited the calculation of work hours to only those hours that an individual is paid by the licensee, works on shift, and/or is scheduled to be working by the licensee, many individuals may continue to be permitted to work excessive hours and thereby become fatigued. Therefore, proposed § 26.199(b)(1) would require licensees to include these work hours in their work hour calculations.

The proposed rule would not require licensees to include the time periods during which an individual participates in shift turnover in the calculation of the individual's work hours. Proposed § 26.199(b)(1)(i) would be added to define the specific shift turnover activities that licensees may exclude from their work hour calculations. The proposed rule would define shift turnover as only those activities that are necessary to safely transfer information and responsibilities between two or more individuals between shifts. Shift turnover is a vital activity, but it also contributes to the length of the work day, and therefore, to worker fatigue. The NRC understands that shift turnovers routinely add approximately 30 minutes to the length of a shift and typically no more than 2–2.5 hours to the length of a typical work week. Stakeholder comments during the public meetings described in Section V highlighted the importance of this activity for communicating plant status information between work crews as well as concern that including turnover time in work hour calculations could cause indirect pressure on individuals to abbreviate shift turnovers in order to ensure that work hour limits would not be violated. This pressure could compromise the quality of shift turnovers and have unintended adverse safety consequences, such as omitting important equipment or maintenance status information. Although some stakeholders believe that turnover is part of the workday and, therefore, should be included in the calculation of hours worked, the NRC believes that the benefit of including turnover for managing worker fatigue would be outweighed by the potential adverse consequence on the quality of shift turnovers.

The proposed exclusion of shift turnover from the work hour calculations would be consistent with the current requirements in most licensee technical specifications for the control of work hours for personnel performing safety-related functions, and with GL 82–12. For example, most technical specifications state, ''An individual should not be permitted to work more than 16 hours in any 24-hour period, nor more than 24 hours in any 48-hour period, nor more than 72 hours in any 7-day period, all excluding shift turnover time;'' (see SECY–01–0113, Fatigue of Workers at Nuclear Power Plants, Attachment 1, Table 2). However, the proposed rule would more clearly describe the activities may be included in turnover and the activities that may not be included. The proposed provision would address NRC concerns arising from observations that licensees have occasionally excluded 2 or more hours from calculated work hours on the basis that the individuals were engaged in ''turnover.'' In order to ensure that turnover is not hurried, the proposed rule would not establish a time limit for an acceptable turnover period. However, by clearly delineating the activities that licensees may consider to be turnover activities, the proposed rule would reduce the potential for individuals and/or licensees to use the proposed shift turnover exclusion to perform other work activities.

Proposed § 26.199(b)(1)(ii) would be added to permit licensees to exclude within-shift breaks and rest periods from their work hour calculations only if the individual has both a reasonable opportunity and accommodations for restorative sleep. The proposed rule would permit licensees to exclude breaks from the accounting of work hours only when the exclusion can be

justified on the basis that the break substantively mitigates fatigue. The proposed exclusion would be added to address circumstances in which workers may be scheduled for round-the-clock duties (e.g., dedicated fire brigades) during which they are on site and available to respond as needed, but the licensee provides sleeping accommodations and the individuals are allowed periods of time to obtain restorative sleep. This proposed exclusion would also permit licensees to make use of strategic napping, a well-proven fatigue countermeasure (McCallum, et al., 2003; Petrie, et al., 2004; Rosekind, et al., 1994, 1995; Dinges, et al., 1988; Kemper, 2001; Schweitzer, et al., 1992; Sallinen, et al., 1998), without requiring the nap period to be included in work hour calculations.

The proposed exclusion would be limited to that portion of a break or rest period in which there is reasonable opportunity for restorative sleep. For example, a 15-minute coffee break would not provide a reasonable opportunity for restorative sleep. The proposed requirement would be worded to limit the exclusion to the amount of the time the individual has available to actually sleep, and would not include transit time to and from the sleep accommodations. The term, ''restorative sleep,'' means an amount of sleep that mitigates fatigue, which is generally considered to be a minimum of approximately 30 minutes (Buxton, et al., 2002; McCallum, et al., 2003; Sallinen, 1998; Rosekind, 1995).

The proposed provision would also require that individuals must have available reasonable accommodations for sleep in order to exclude the break period from the calculation of the individual's work hours. Reasonable accommodations would include a sleep surface in a darkened, quiet room (e.g., bed, recliner) (Priest, 2000).

This degree of specificity in the proposed paragraph would be necessary because presently some licensees exclude within-shift breaks from the calculation of work hours required by their technical specifications. Excluding break periods from the calculation of work hours can add up to as many as 12 hours over the course of a week, which permits individuals to work an additional 12-hour shift. As a consequence, licensees may assign seven consecutive 12-hour shifts to individuals, but only include 72 hours in their work hour calculations, rather than the 84 hours that the individuals are actually at work. This practice permits individuals to work continuous 12-hour shifts without the licensee having to authorize a deviation from technical specification requirements. The discussion of proposed § 26.199(d)(1)(iii) details the basis for limiting individuals to 72 work hours per week.

Although breaks without sleep have some fatigue mitigation value (Tucker, Folkard and Macdonald, 2003), the benefits are principally limited to short-term improvements in vigilance. Horne (1988), Mitler and Miller (1996), and Dinges, et al. (1997) have pointed out that the only non-pharmacological cure for fatigue is sleep. The duration of within-shift break times is normally insufficient to allow a worker to obtain sleep and, consequently, these periods add to the total amount of time an individual remains awake while at work. Time since awakening is a principal determinant of worker fatigue (Folkard and Akerstedt, 1992; NTSB, 1994; Akerstedt, 2004) and performance generally declines as a function of the amount of time that an individual remains awake (Dawson and Reid, 1997). Because within-shift breaks and rest periods provide only short-term mitigation of fatigue (Kruger, 2002; Baker, et al., 1990), the proposed rule would require licensees to include short breaks in the calculation of work hours.

Proposed § 26.199(b)(1)(iii) would be added to permit licensees to assign individuals, who are qualified to perform the duties listed in proposed § 26.199(a), to other duties than those listed in proposed § 26.199(a), without controlling their work hours in accordance with the work hour controls contained in proposed § 26.199(d). However, if these individuals would be assigned or returned to performing any duties that are listed in proposed § 26.199(a) during the averaging period, the proposed paragraph would require the licensee to include all of the hours that they worked when calculating the individuals' work hours for the averaging period and to subject the individuals to the work hour controls in proposed § 26.199(d). For example, if a licensed operator was assigned to training for an entire averaging period, then his or her work hours would not be subject to proposed § 26.199(d) for that period because he or she would not be performing any of the duties listed in proposed § 26.199(a)(1). However, if the same individual was assigned to training for only a portion of the averaging period and performed the duties listed in proposed § 26.199(a)(1) during the remainder of the averaging period, all of his or her hours, including those worked while assigned to training, would be included in the calculation of the individual's work hours for the period and would be included in the operations job duty group collective work hours average, as if the individual was performing operations duties for the entire averaging period. Licensees would be required to count the hours that the individual worked performing other duties if an individual begins performing the duties listed in proposed § 26.199(a) during the averaging period because the individual's level of fatigue is largely dependent on the total number of hours he or she has worked, regardless of where the work was performed or the nature of the work itself. Therefore, including the hours worked performing other duties would provide assurance that fatigue would not compromise that individual's ability to safely and competently perform the duties that are specified in proposed § 26.199(a).

Proposed § 26.199(b)(2) [Collective work hours] would be added to establish requirements for calculating the collective work hours of the job duty groups that would be subject to the collective work hour limits in proposed § 26.199(f) [Collective work hour limits]. (The collective work hour limits and the bases for establishing them are discussed with respect to proposed § 26.199(f).) Specifically, the proposed rule would require licensees to calculate, at a minimum, a separate work hour average for each job duty group in proposed § 26.199(a). (Appropriate methods for defining job duty groups to which the collective work hour limits would be applied are discussed with respect to proposed § 26.199(b)(3).)

Proposed § 26.199(b)(2) would limit the length of any averaging period that licensees may use for calculating collective work hours to no more than 13 weeks. In proposing to limit the averaging period to no more than 13 weeks, the NRC considered the need to account for periods of elevated work hours, which have the potential to cause fatigue, as well as the need for an averaging period that would not be unduly influenced by short-term variations in work hours. The NRC also considered industry comments during the stakeholder meetings discussed in Section V expressing a desire for an averaging period that is consistent with other surveillance or assessment requirements. The proposed requirement would provide the flexibility for licensees to use a 13-week averaging period that may be aligned with quarterly reviews or shorter periods that coincide with existing time-keeping practices (e.g., a multiple of pay periods). The proposed flexibility to use shorter averaging periods would also

accommodate other circumstances, such as an outage period that occurs within a 13-week averaging period, during which the proposed rule would not require licensees to implement the collective work hour controls, as permitted in proposed § 26.199(f)(2)(iii). Licensees may choose to define shorter averaging periods in these circumstances in order to synchronize subsequent averaging periods with their other scheduling demands (e.g., quarterly reviews, pay periods, the calendar or fiscal year).

The NRC considered both shorter and longer periods in determining the proposed maximum duration for an averaging period. The NRC rejected requiring a shorter maximum averaging period because it would increase the potential for short-term (e.g., 2–3 weeks) emergent work conditions to cause group averages to exceed the 48-hour collective work hours limit in proposed § 26.199(f), if overtime is required to respond to the emergent work. These short-term work periods of high overtime use have limited potential for causing cumulative fatigue, considering the individual work hour controls in proposed § 26.199(d). Therefore, group averages that are based on shorter averaging periods may overestimate the cumulative fatigue of a job duty group. By contrast, increasing the averaging period to more than 13 weeks would permit a job duty group to work for more than three weeks at the individual limit of 72 hours in 7 days in proposed § 26.199(d)(1)(iii) without raising the group average above the 48-hour limit. Therefore, repeated periods of elevated group work hours would not be reflected in the job duty group average and may cause a licensee to delay taking any short-term or long-term corrective actions that may be necessary to control cumulative fatigue within a job duty group. Therefore, the NRC determined that the 13-week averaging period would provide the appropriate level of sensitivity for licensees to identify and respond to conditions that present a significant potential for cumulative fatigue.

Proposed § 26.199(b)(2)(i) would be added to permit licensees to calculate collective work hours for each of the broad job duty groups that is listed in proposed § 26.199(a) or smaller sub-groups that would be comprised of individuals who are performing similar duties within any of these broad job duty groups. However, the proposed rule would also require that licensees who elect to calculate collective work hours for smaller sub-groups must ensure that the work hours of all individuals in the broader job duty groups listed in proposed § 26.199(a) are included in the collective work hour calculations of a smaller job duty group. That is, the proposed rule would require licensees to ensure that the work hours of all individuals who perform job duties that require them to be subject to the proposed work hour controls of this section are counted. The proposed rule would not permit licensees to combine the broad job duty groups into a larger group (e.g., combining the operations and maintenance groups) because doing so may mask excessive work hours in one of the job duty groups. Separate calculations for each job duty group would be necessary to ensure that the work hours of each job duty group as a whole would be maintained at a level that is consistent with the proper management of cumulative fatigue.

In establishing the requirements for calculating collective averages in proposed § 26.199(b)(2)(i) (i.e., determining how many job functions may be included in a collective average), the NRC weighed the merits of limiting the job duty groups to narrow collections of similarly qualified individuals who are capable of performing each other's duties, and therefore sharing workload and work hours. Requiring licensees to calculate collective work hours for smaller sub-groups would provide a more precise indication of work hours. Defining smaller sub-groups would also provide greater assurance of identifying groups of individuals who may be working excessive hours because of inadequate staffing for specific job skills.

However, the proposed rule would not require licensees to calculate collective work hours for smaller sub-groups for several practical reasons:

(1) It would be difficult to define such groups in the rule in a manner that licensees could interpret and implement consistently, considering the diversity of their organizational structures and nomenclature for job duties;

(2) Individuals within the broad job duty groups may be qualified to perform functions in multiple sub-groups. Therefore, assigning these individuals to an appropriate sub-group would be challenging and likely to result in inconsistent implementation of the proposed rule; and

(3) Individuals would be likely to transition between sub-groups within an averaging period due to changes in their work focus or qualifications, which would impose a significant burden on licensees to track each individual's sub-group membership.

For these reasons, the proposed rule would not require licensees to define narrower sub-groups, although it would permit licensees to define such sub-groups for calculating collective work hours.

The proposed requirements for defining groups for calculating collective work hours would ensure that, at a minimum, collective work hour calculations would provide an indication of a licensee's control of work hours for broad licensee functions (*e.g.*, operations, maintenance, security) that are important to the protection of public health and safety and the common defense and security. Further, proposed § 26.199(j)(2) and (4) would require licensees to identify and take corrective action for instances of excessive work hours indicating inadequate staffing for any job that would be subject to the work hour controls of proposed § 26.199(f). Therefore, collective work hour calculations for broad job duty groups would appropriately support the objectives of the collective work hour controls, when implemented in conjunction with the requirements of proposed § 26.199(j)(2) and (4), and provide assurance that the work hours of each job duty group as a whole would be maintained at a level that is consistent with the proper management of cumulative fatigue.

Proposed § 26.199(b)(2)(ii) would be added to require licensees to include, in the calculation of collective work hours for each job duty group, the work hours of any individual who performs the job duties of the job duty group, as determined by the licensee in accordance with proposed § 26.199(b)(2)(i). The NRC intends the term, ''any individual who performs,'' as used in proposed § 26.199(b)(2)(ii), to mean individuals who are qualified to perform the specified duties.

The NRC considered limiting the calculation of collective work hours to individuals who actually performed the duties of the job duty group during the averaging period. However, during the stakeholder meetings discussed in Section V, industry representatives indicated that this alternative would result in a substantial administrative burden associated with tracking whether each individual actually performed any duties of the group during the averaging period. The NRC considered this comment, as well as the increased volatility of group size and membership that would result from the alternative approach, and concluded that the administrative simplification of defining group membership based on qualifications would substantially reduce the burden of the proposed requirement without a commensurate reduction in the effectiveness of the

collective work hour controls in addressing cumulative fatigue. The proposed approach that is based on qualifications would require licensees to expend significantly fewer resources than tracking which individuals are performing specific tasks on a constantly changing basis. The effectiveness of the work hour controls would not be reduced because the number of individuals who are qualified to perform most of these job duties is not substantially greater than the size of each job duty group. Therefore, the effect of including the work hours of a few individuals who are qualified to perform the groups' job duties but did not actually perform any of those duties during an averaging period would be minimal.

Proposed § 26.199(b)(2)(ii) would also require the licensee to include in the calculations the work hours of ''any individual'' who performs the specified job duties, regardless of the individual's employer. The NRC recognizes that many of the job functions in the job duty groups listed in proposed § 26.199(a) are performed by C/Vs, as well as by direct employees of the licensee. It is important to provide reasonable assurance that fatigue does not impair the job performance of any individual who performs these duties, irrespective of the individual's organizational affiliation. Therefore, the proposed rule would require licensees to include in the collective work hours calculations for the appropriate job duty group any work hours of C/V personnel who perform the specified job duties.

Proposed § 26.199(b)(2)(ii) would require licensees to include in their calculations only the hours that individuals worked ''at the licensee's site'' during the averaging period, but not any hours that the individuals may have worked at other facilities. Therefore, collective work hour calculations would not include any work hours that an individual may have worked during the averaging period, for example, at another nuclear plant, at a non-nuclear power plant, or in any other place or form of employment. The NRC acknowledges that hours worked, irrespective of whether the work is performed at a nuclear power plant or any other place of employment, can contribute to worker fatigue, and that consideration of all hours worked would provide a more complete basis for assessing the potential for worker fatigue. However, in establishing the requirement to include only hours worked at the licensee's site in the collective work hours calculations, the NRC also considered the practical constraints on the ability of licensees to obtain complete and reliable work hours information from other employers. In addition, the NRC anticipates that licensees would comply with the collective work hour controls of proposed § 26.199(f) [Collective work hour limits] by continuing to distribute work hours and rest days among individuals in accordance with the capabilities and needs of the individuals, consistent with most licensees' current practices. Accordingly, the proposed work hour requirements would apply only to those work hours which the licensee can directly control and manage, which are the hours that an individual works for the licensee.

A second implication of adding the phrase, ''at the licensee's site,'' to the proposed paragraph is that the proposed rule would prohibit licensees from combining all of the individuals across a fleet of plants who may be subject to the same FFD program into one of the broad job duty groups listed in proposed § 26.199(a). For example, if one licensee operates units at four different sites, proposed § 26.199(b)(2)(ii) would permit the licensee to create an operations job duty group for multiple units at one site, but would prohibit the licensee from combining the work hours of all operations personnel across the four different sites to calculate a fleet-wide group average. The proposed prohibition would be necessary to ensure that the size of the job duty groups is not so large that excessive work hours in a job duty group at one site would be masked by lower work hours in the same job duty group at another site, with the result that the group average would be insensitive to local variations in work hours.

Proposed § 26.199(b)(2)(ii) would also require licensees to include in their collective work hours calculations only the work hours of individuals who worked at least 75 percent of the normally scheduled hours of the job duty group. This proposed limitation would ensure that job duty group averages are not artificially suppressed by including the work hours of individuals who worked part-time or substantially less than full-time during the averaging period. For example, the proposed rule would prohibit licensees from including in their calculations the work hours of individuals who were on disability or maternity leave for more than 25 percent of the averaging period, or entered or left the job duty group as a result of a personnel action, without working 75 percent of the group's normally scheduled hours. The proposed limitation would be necessary to ensure that the collective average would actually represent the work hours of the individuals who comprised the job duty group for the majority of the averaging period.

Proposed § 26.199(b)(2)(iii) would be added to require that the licensee-defined averaging periods must comprise consecutive days or days that are separated only by days that licensees would be permitted to exclude from the collective work hour calculations in proposed § 26.199(f)(1)–(f)(3) and (f)(5), (h), and (i). That is, the proposed rule would require that the averaging period must comprise consecutive days unless outages, increased threat conditions, plant emergencies, and the other conditions that are specified in proposed § 26.199(f)(1)–(f)(3) and (f)(5), (h), and (i) occur during the averaging period. This proposed requirement would be necessary to prevent licensees from selectively constituting averaging periods to meet the collective work hour limits by combining work hours during disparate time periods.

However, if any of the conditions arise that are specified in proposed § 26.199(f)(1)–(f)(3) and (f)(5), (h), and (i) (*e.g.*, outages, increased threat conditions, plant emergencies) during an averaging period, the proposed paragraph would permit licensees to combine consecutive days immediately preceding and following the excluded period(s) to constitute a complete averaging period. For example, if the length of a licensee's averaging period is 13 weeks and two weeks of an averaging period had elapsed before an increased threat condition occurred (or an outage period began), the licensee could define an averaging period as including those two weeks and the 11 weeks that followed the end of the increased threat condition.

The objective of proposed § 26.199(b)(2)(iii) would be to ensure that collective work hour calculations are representative of typical work hours during a distinct period, to the extent practicable, while recognizing that there may be intervening periods that would be excluded from the collective work hour controls that would disrupt the licensee's normal averaging period schedule. The proposed rule would permit licensees flexibility in comprising their averaging periods in these instances in order to minimize a potential administrative burden that could result from averaging periods that, because of the exclusion period, are no longer synchronized with other needs (*e.g.*, pay periods, the fiscal year). Because the exclusion periods would occur infrequently, the NRC anticipates that permitting licensees flexibility in constituting averaging periods around

an excluded period would not mask any systemic or programmatic weaknesses in the licensees' work hour controls over the long-term.

Proposed § 26.199(b)(2)(iv) would be added to require licensees to include in an averaging period all days that are not excluded from the collective work hour controls under proposed § 26.199(f))(1)–(f)(3) and (f)(5), (h), and (i). Proposed § 26.199(b)(2) would provide licensees substantial flexibility in comprising averaging periods that include, or are contiguous with, periods that would be excluded from the collective work hour controls. However, the proposed rule would add this proposed provision to ensure that licensees' collective work hour calculations are complete and represent the typical work hours of individuals by requiring that all days not specifically excluded from collective work hour requirements would be included in at least one averaging period.

Proposed § 26.199(b)(2)(v) would be added to prohibit licensees from including any individual's work hours in more than one averaging period. The proposed rule would prohibit double-counting of work hours to ensure that each collective work hours average would represent the work hours of each job duty group during a discrete period of time.

Proposed § 26.199(c) [Work hours scheduling] would be added to require licensees to schedule the work hours of individuals who are subject to this proposed section in a manner that is consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts. The maximum work hour and minimum break requirements that are specified in proposed § 26.199(d) [Work hour controls for individuals] would be intended for infrequent, temporary circumstances, and not as guidelines or limits for routine work scheduling. In addition, the work hour controls in proposed § 26.199(d) would not address several elements of routine schedules that can significantly affect worker fatigue, such as shift length, the number of consecutive shifts, the duration of breaks between blocks of shifts, and the direction of shift rotation. Therefore, proposed § 26.199(c) would require licensees to schedule personnel consistent with preventing impairment from fatigue from these scheduling factors.

The proposed rule would require licensees to address scheduling factors because human alertness and the propensity to sleep vary markedly through the course of a 24-hour period. These variations are referred to as circadian rhythms and are the result of changes in physiology brought about by a circadian clock or oscillator inside the human brain that is outside the control of the individual. Work may be scheduled, and the consequent timing of periods of sleep and wakefulness, in a manner that either facilitates an individual's adaptation to the work schedule or challenges the individual's ability to get adequate rest. Therefore, the duration, frequency, and sequencing of shifts, particularly for personnel who work rotating shifts, are critical elements of fatigue management. The effect of circadian rhythms on worker fatigue is also discussed in Section IV. D. The importance of these elements for fatigue management is reflected in guidelines for work scheduling, such as NUREG/CR–4248 and EPRI NP–6748 (Baker, *et al.*, 1990), and in technical reports, such as the Office of Technology Assessment's report, Biological Rhythms: Implications for the Worker (Liskowsky, 1991). The EPRI report, for example, addresses issues related to the sequencing of day, evening, and night shifts, and the use of break periods between shifts to optimize the ability of personnel to obtain adequate sleep and effectively transition from one shift to another. Although research provides clear evidence of the importance of these factors in developing schedules that support effective fatigue management, the NRC also recognizes that the complexity of effectively addressing and integrating each of these factors in work scheduling decisions precludes a prescriptive requirement. Therefore, proposed § 26.199(c) would establish a non-prescriptive, performance-based requirement.

Proposed § 26.199(d) [Work hour controls for individuals] would be added to specify that licensees must establish work hour controls for each individual who performs the duties listed in proposed § 26.199(a). The proposed rule would require licensees to establish controls that would limit work periods and provide for breaks that are of sufficient length to allow the individual to obtain restorative rest.

Proposed § 26.199(d)(1) would be added to establish work hour limits for consecutive, rolling periods of 24 and 48 hours and seven days. The majority of licensees have incorporated the work hour controls from the NRC's Policy on Worker Fatigue, as disseminated by GL 82–12, into either their technical specifications or administrative procedures. The Policy (including the bases for the individual requirements) has been in place for over 20 years and was the subject of a substantive review that is documented in Attachment 1 to SECY–01–0113. The work hour limits from GL 82–12 also were the subject of substantial stakeholder comment during the public meetings described in Section V. In developing the proposed requirements in this paragraph, the NRC staff considered the information gained through these stakeholder interactions.

Proposed § 26.199(d)(1)(i) would limit the number of hours that an individual may work in any 24-hour period. The proposed paragraph would permit individuals to work no more than 16 work hours in any 24-hour period. This proposed limit would be identical to that specified in GL 82–12. Attachment 1 to SECY–01–0113 provides the basis for this proposed limit, which is summarized as follows: Studies have shown that task performance declines after 12 hours on a task (Folkard, 1997; Dawson and Reid, 1997; Rosa, 1991). Other studies have shown that the relative risk of having an accident increases dramatically after 9 consecutive hours on the job (Hanecke, *et al.*,1998; Colquhoun, *et al.*,1996; U.S. DOT, 49 CFR Parts 350, *et al.*, Proposed Rule, May 2, 2000, 65 FR 25544). Further, a maximum of 12 work hours per day was the limit recommended by nine experts who met in 1984 to develop recommendations for NUREG/CR–4248. Therefore, in originally developing the NRC's Policy on Worker Fatigue, the NRC had planned a 12-hour maximum limit, but revised it to 16 hours in response to practical concerns from industry that the 12-hour limit required personnel who worked 8-hour shifts to split shifts when they work overtime. Those practical concerns remain valid, and the proposed rule would retain a 16-hour limit.

Although the proposed rule would permit 16-hour shifts, other work hour limits in the proposed rule would effectively limit the number of 16-hour shifts that licensees could assign. This issue is discussed in greater detail in Section V, with respect to a comment on proposed Subpart I by PROS.

Proposed § 26.199(d)(1)(ii) would limit the number of hours that an individual may work in any 48-hour period. The proposed paragraph would permit an individual to work no more than 26 work hours in a 48-hour period, by contrast to the related limit in GL 82–12, which limits individuals' work hours to 24 work hours in any 48-hour period. This proposed change would be made to accommodate the fact that most licensee sites are now working routine 12-hour shifts, rather than routine 8-hour shifts, as was the case when GL 82–12 was published. At that time, the

basis for the 24-hour limit was to permit a worker to work one 16-hour double shift, followed by an 8-hour break, and then start another 8-hour shift at the worker's normal starting time, but only in very unusual circumstances. With most plants now routinely working 12-hour shifts, the proposed rule would increase the maximum work hours in a 48-hour period from 24 to 26 hours to decrease the burden on licensees that would be imposed by accommodating situations in which a worker's relief is delayed, or similar circumstances. For example, a 12-hour shift worker could work up to 14 hours in one day and still return to work at his or her normal time the next day, but could only work 12 hours that day. In the extreme, the proposed 26-hour limit would permit an individual to work up to 16 hours one day, followed by a minimum 10-hour break, as required in proposed § 26.199(d)(2)(i). The individual would then be limited by the proposed requirement to 10 hours of work over the next 22 hours.

In developing the proposed relaxation of the previous 24-hour limit on the number of hours that individuals can work in 48 hours, the NRC considered several factors. These factors include:

(1) The burden associated with granting a waiver for the additional two hours;

(2) The increased stringency of the criteria for granting a waiver of the work hour limits in proposed § 26.199(d)(3) relative to those in plant technical specifications; and

(3) The increased potential for worker fatigue and fatigue-related errors that may accrue from working 26 hours in a 48-hour period versus working 24 hours in that same period.

The increase of two additional work hours during a 48-hour period would likely contribute to some increase in fatigue and fatigue-related errors, particularly when these hours come at the end of a work period of 12 or more hours or coincide with a decrease in an individual's circadian level of alertness, as might be expected at the end of a 12-hour day shift. However, because the revised criteria for granting a waiver of the work hour limits in proposed § 26.199(d)(3) are expected to substantially reduce the number of waivers that would be granted, the licensee would have to either delay or turn over any work that the individual is performing when it is necessary for him or her to go off-shift. Either delaying or turning over work could contribute to errors. In addition, licensee use of waivers to exceed the 24-hours of work in any 48-hour period limit for short durations is common practice. As a result, the NRC believes that the proposed relaxation would principally reduce the paperwork burden, rather than result in an increase in the hours that individuals would actually work under the proposed rule. Accordingly, the proposed relaxation would provide a substantive reduction in burden with a limited net effect on human performance reliability.

Proposed § 26.199(d)(1)(iii) would be added to limit the number of hours an individual may work in any 7-day period. The proposed paragraph would limit an individual to working no more than 72 hours in any 7-day period. This proposed limit would be identical to the related limit specified in GL 82–12. Attachment 1 to SECY–01–0113 provides the basis for the proposed limit, which is summarized in this paragraph: In the absence of the break requirements in proposed § 26.199(d)(2), the proposed limit could potentially permit a worker to work six 12-hour shifts per week continuously. Studies have shown that longer work schedules cause fatigue (Colquhoun, 1996; Rosa, 1995). Human reliability analysis experts have recommended that the NRC set ''a maximum of 60 hours in any 7-day period and a maximum of 100 hours in any 14-day period,'' noting studies indicating that fatigue from long work hours can result in personnel developing their own subjective standards of what is important in their jobs (NUREG/CR–1278, ''Handbook on Human Reliability Analysis with Emphasis on Nuclear Power Plant Applications''). Further, NUREG/CR–4248 recommends a limit of 60 hours of work in a 7-day period. However, in the NRC's Policy on Worker Fatigue, the NRC established a 72-hour maximum limit based on the expectation that individuals would work up to this limit on an infrequent and temporary basis. The proposed rule would codify this expectation, in part, through proposed § 26.199(d)(2)(iii), which would require licensees to schedule a 48-hour break every 14 days for individuals who are subject to the proposed work hour controls, and would, thereby, effectively prevent an individual from working six 12-hour shifts for more than 1 week at a time.

Proposed § 26.199(d)(2) would be added to require licensees to provide adequate rest breaks for individuals who are performing the duties listed in proposed § 26.199(a). This proposed requirement would be necessary to ensure that licensees provide individuals with sufficient time off between work periods (shifts) to permit the individuals to recuperate from fatigue and provide reasonable assurance that acute and cumulative fatigue do not compromise the abilities of these individuals to safely and competently perform their duties. Acute fatigue results from excessive cognitive work, especially if an individual is missing significant amounts of sleep, and is readily relieved by obtaining adequate rest and sleep. Cumulative fatigue results from receiving inadequate amounts or poor quality sleep for successive days. An extensive body of research has shown that a lack of adequate days off and extended workdays result in a cumulative sleep debt and performance impairment [Williamson and Feyer, 2000; Tucker, 1999; Colquhoun, 1996; Baker, *et al.*, 1994; Webb and Agnew,1974; U.S. DOT (65 FR 25546; May 2, 2000)].

Proposed § 26.199(d)(2) would define a rest break as an interval of time that falls between successive work periods, during which the individual does not perform any duties for the licensee. For example, during rest breaks, individuals would not be performing work-related duties such as completing paperwork reviews, mandatory reading, or required self-study. Rest breaks could include periods during which an individual is ''on-call'' because actual demands on an individual's time while he or she is on-call would be infrequent and of limited duration, such as answering a phone call. However, if an individual who is ''on-call'' is ''called-in'' to report to the site, the licensee would be required to include the hours that the individual worked as work hours, rather than as break time, because the individual would be performing duties on behalf of the licensee while on site. The proposed rule would permit individuals to conduct shift turnovers within rest break periods, as discussed with respect to proposed § 26.199(b)(1)(i).

Proposed § 26.199(d)(2)(i) would be added to require licensees to provide a 10-hour break between successive work periods, but would permit 8-hour breaks in limited circumstances in which a shorter break would be necessary for a crew's scheduled transition between work schedules. Current licensee technical specifications and administrative procedures that are based on GL 82–12 require a minimum 8-hour break between work periods. Proposed § 26.199(d)(2)(i) would increase the minimum break period from 8 hours to 10 hours in order to provide greater assurance that individuals have an adequate opportunity to obtain the 7–8 hours of sleep that are recommended by most experts in work scheduling and fatigue. When considering shift turnover and commute times, which do not provide individuals with opportunities

for rest and recovery, a nominal rest break of 8 hours actually leaves the individual with approximately 6 hours available to meet personal needs, including sleep (8.0 hours off-duty minus an average 1.5-hour round-trip commute minus an average 0.5 hours spent in shift turnover, equaling 6 hours available for personal needs). However, individuals typically also require 0.5 hours for preparing (or buying) and eating at least one meal off-shift, and 0.5 hours for personal hygiene, which leaves, at best (*i.e.*, assuming no social or domestic commitments that day), a total of 5 hours available for sleep. By contrast, the 10-hour break would ensure that individuals would generally have 7 hours available each day for sleep, which is close to the 7–8 hours of sleep needed by adults in the U.S. (National Sleep Foundation, 2001; Monk, *et al.*, 2000; Rosekind, *et al.*, 1997; Rosa, 1995).

The scientific literature provides strong evidence of the negative effects on performance and alertness of a week of sleep restriction to 5 hours. Dinges, *et al.*, 1997, and Belenky, *et al.*, 2003, who both represent key laboratories in the field of sleep deprivation (the University of Pennsylvania and the Walter Reed Army Institute of Research, respectively), have conducted studies in this area. Belenky, *et al.* (2003) clearly demonstrates that limiting sleep to 5 hours per night leads to significant impairment in both alertness and actual performance, which builds up over the week, compared to the alertness and performance of individuals who obtain 7 hours of sleep per night. The difference was found to be significant on all days during which sleep was restricted to 5 hours. Compared to the research subjects' performance after two baseline nights during which they obtained 7 hours of sleep, the subjects' performance after nights during which they were restricted to 5 hours of sleep showed more than twice as many lapses (extra slow responses). Dinges, *et al.* (1997) obtained similar results. From the second baseline day (the last day during which a full 7 hours of sleep was obtained) through the seven partial sleep restriction days, the research subjects' sleepiness and performance became progressively worse and these effects achieved a high level of statistical significance. The Dinges, *et al.* study also concluded that ''* * * recovery from these deficits appeared to require two full nights of sleep.''

The importance of adequate sleep and the need to provide adequate opportunity for sleep in work schedules are reflected in studies (*e.g.*, Kecklund and Akerstedt, 1995; Wylie, *et al.*, 1996), guidelines (Pratt, 2003; Baker, *et al.*, 1990), handbooks (Tepas and Monk, 1987), and the panel recommendations of sleep and fatigue experts (*e.g.*, NUREG/CR–4248). The importance of providing an opportunity for at least 8 hours of sleep is also noted in an EPRI/NEI Work Hours Task Force white paper, Managing Fatigue in the Nuclear Energy Industry: Challenges and Opportunities (ADAMS Accession No. ML0221740179). The report, prepared by Mark Rosekind, states that ''the strongest and most extensive data demonstrate that sleep is a critical factor in promoting alertness and performance in subsequent wakefulness. Data clearly show that acute and cumulative sleep loss degrade subsequent alertness and performance. Therefore, any 'hours of service' policy should emphasize the provision of an appropriate sleep opportunity prior to duty.'' More specifically, human reliability analysis experts have recommended that the NRC require ''a break of at least 12 hours between all work periods'' (NUREG/CR–1278). Similarly, a panel of sleep and fatigue experts criticized a DOT requirement for an 8-hour break for motor carriers as inadequate because 8 hours of off-duty time does not translate into 8 hours of sleep. The DOT has since amended its regulations for motor carriers to require 10-hour rest breaks (68 FR 22456–22517; April 28, 2003).

Although a longer minimum rest break requirement would provide greater assurance that individuals have adequate opportunities for sleep, the proposed 10-hour break requirement would provide adequate opportunity for rest when used infrequently, as would be expected given other requirements in this proposed rule. For example, proposed § 26.199(d)(1)(ii) would limit individuals to working 26 hours in any 48-hour period. Although licensees could use routine 10-hour breaks in conjunction with atypical shift durations (*e.g.*, alternating 12- and 14-hour shifts), the practical implications of these schedules, such as varied start times, make their use improbable. As a consequence, the 10-hour break requirement would be sufficient to assure adequate rest during infrequent circumstances in which individuals may work extended hours (*e.g.*, more hours than their typical 8-, 10-, or 12-hour shift) and that rest opportunities would typically vary between 12 and 16 hours in duration.

The proposed minimum 10-hour break duration would also accommodate most scheduling circumstances for the common shift durations that are currently in use in the industry. A notable exception is that the proposed 10-hour break requirement could potentially prevent an individual who has worked 16 hours straight (*e.g.*, two consecutive 8-hour shifts) from returning to duty at the start of his or her next regularly scheduled shift. However, the 10-hour break requirement would appropriately prevent the individual from working in this circumstance, because the potential for degraded job performance resulting from fatigue would be substantial, given the individual's continuous hours of work and limited opportunity to sleep.

Proposed § 26.199(d)(2)(i) would permit a minimum 8-hour break in only one circumstance. That is, the proposed paragraph would permit licensees to schedule an 8-hour break, if the 8-hour break is necessary to accommodate a crew's scheduled transition between work schedules. During the public meetings described in Section V, the NRC received comments that the proposed 10-hour break would occasionally interfere with a transition from 12-hour shifts to 8-hour shifts. This transition would typically occur at the end of an outage for individuals who normally work an 8-hour shift, but work a 12-hour shift during outages. Although the proposed exception would provide individuals with less time for recovery, the shorter break would be limited to one break occurring on a very restricted frequency. Therefore, the proposed permission for an 8-hour break in the circumstances of a shift transition would provide scheduling flexibility with minimal potential to adversely affect an individual's ability to safely and competently perform his or her duties.

Proposed § 26.199(d)(2)(ii) would be added to require a 24-hour break in any rolling 7-day period. Break periods longer than 10 hours between shifts are necessary on a regular basis in order to maintain reliable human performance. For example, Belenky, *et al.* (2003) found that the performance of subjects whose sleep periods were restricted to 7 hours per night over 7 consecutive days increasingly degraded as the number of sleep-restricted days increased. Van Dongen, *et al.* (2003) similarly found that the performance of subjects whose sleep was limited to 8-hours per night also declined over a two-week period. The only subjects in these studies who did not show any performance decrements were those who were permitted 9-hour sleep periods in the Van Dongen study. These results clearly demonstrate that individuals require more rest than a 10-hour break provides over time to prevent performance degradation from cumulative fatigue, including that

which accrues from a series of days of mild sleep restriction (*e.g.*, 7 hours per night).

Further, a 10-hour break provides an opportunity for 7 hours of sleep only if one assumes the minimal times for meals, hygiene, and commuting described with respect to proposed § 26.199(d)(i), with no other daily living obligations. These assumptions are realistic only for unusual circumstances and limited periods of time during which individuals may be able to temporarily defer their other obligations. As the number of consecutive days increases on which individuals have only a 10-hour break available to meet these other obligations, the pressure on individuals to restrict sleep time in order to meet these other obligations increases. In addition, after a series of moderately restricted sleep periods (*i.e.*, 6 hours per night), individuals' subjective feelings of sleepiness stabilize and they report feeling only mild sleepiness (Van Dongen, *et al.*, 2003), which may further encourage individuals to restrict their sleep periods in order to meet daily living obligations. Van Dongen, *et al.* noted ''* * * the lack of reports of intense feelings of sleepiness during chronic sleep restriction may explain why sleep restriction is widely practiced—people have the subjective impression they have adapted to it because they do not feel particularly sleepy.'' However, results of the Van Dongen study also demonstrated that the performance of subjects in that study continued to degrade as the number of consecutive restricted sleep periods increased over a two-week period, including the performance of subjects who were permitted 6- and 8-hour sleep periods.

Therefore, the proposed provision for a 24-hour break in any rolling 7-day period would serve both to prevent and mitigate cumulative fatigue. The proposed 24-hour break periods would not only provide some opportunity for recovery sleep, but also time that individuals need to meet the many daily living obligations that they cannot otherwise readily meet. Without such long break opportunities, individuals must either forego activities that can be important to general mental and physical fitness (*e.g.*, family interactions, exercise, recreation, doctor appointments) or sacrifice sleep and increase their sleep debt (Presser, 2000), resulting in impairment on the job.

Significant considerations in the NRC's development of proposed § 26.199(d)(2)(ii) and (d)(2)(iii) were industry work scheduling practices during outages and the applicability of other proposed requirements during these periods. In SECY–01–0113 and NRC staff reviews of records of deviations from technical specification work hour controls from 2003 and 2004, the most common deviation identified was to permit individuals to work more than 72 hours in 7 days, frequently by working more than six consecutive 12-hour days. These reviews also indicated that this practice was used extensively at a number of sites. Industry comments at the public meetings described in Section V also confirmed the NRC observation that some licensees were scheduling outages with several weeks of 12-hour shifts with no scheduled days off. This practice would be inconsistent with the findings of the studies and recommendations cited in the discussions of proposed § 26.199(d)(1)(iii) and (d)(2)(ii).

Although the NRC expects that the proposed criteria for granting waivers from the individual work hour controls in proposed § 26.199(d)(3) would significantly reduce the granting of waivers, the proposed maximum individual work hour requirements of proposed § 26.199(d)(1) would not preclude licensees from scheduling consecutive 10-hour shifts with no days off. In addition, although the collective work hour controls in proposed § 26.199(f) would limit cumulative fatigue from broad and extended use of such schedules while plants are operating, these controls would not apply during the first 8 weeks of plant outages, and in other circumstances for security personnel, as detailed in proposed § 26.199(f)(2). Therefore, the proposed work hour controls of § 26.199(d)(1) and (f) would not effectively prevent cumulative fatigue for roving outage crews and other transient workers who predominantly work during plant outages.

By contrast, the long break requirement of proposed § 26.199(d)(2)(ii) would provide an important protection against cumulative fatigue for individuals who work consecutive outages, as well as for all individuals who perform the duties listed in proposed § 26.199(a) during extended plant outages. One stakeholder observed during one of the public meetings described in Section V that assuring transient outage workers are not impaired by fatigue is particularly important because these individuals typically do not have the extensive training in methods for maintaining reliable human performance that is provided to permanent plant personnel.

Proposed § 26.199(d)(2)(iii) would be added to further require licensees to provide individuals with a 48-hour break in any rolling 14-day period. A detailed discussion of the bases for requiring extended breaks is provided with respect to proposed § 26.199(d)(2)(ii). In addition to the bases for the 24-hour break requirement, the details of which also apply to this proposed requirement, a 48-hour break every 14 days is further justified because the maximum individual work hour requirements of proposed § 26.199(d)(1) and the 24-hour break requirement in proposed § 26.199(d)(2)(ii) would not preclude licensees from scheduling a series of weeks that required individuals to work six consecutive 12-hour shifts with only one day off. However, only one day off is insufficient to recover completely from chronic sleep restriction.

The need for at least two consecutive unrestricted sleep periods to recover from restricted sleep and periods of extended work hours has been demonstrated in several studies. Surveys (National Sleep Foundation, 2001, 2002) and studies (Monk, *et al.*, 2001) of actual sleep patterns of shiftworkers show that shiftworkers sleep longer on ''weekends'' (*i.e.*, periods of two or more days off), indicating a need for recovery sleep that is not being met during the workweek. In the Belenky, *et al.* (2003) study that was discussed with respect to proposed § 26.199(d)(2)(ii), the performance of the sleep-restricted subjects, including those whose sleep periods were restricted to 7 hours, did not return to baseline levels on all performance measures, even after 3 recovery nights of 8-hour sleep periods. Further, in a personal communication on March 22, 2005 (ADAMS Accession No. ML050870172), Dr. David Dinges stated that he and his colleagues at the sleep lab at University of Pennsylvania Medical School are currently conducting large-scale studies of the recovery process and that preliminary results from these studies appear to confirm the Belenky, *et al.* findings. He noted that one night of unrestricted sleep is generally insufficient because individuals' circadian rhythms will not permit them to sleep for the 12–14 hours that may be required to recover from a series of days on which sleep has been moderately restricted. In addition, Dr. Dinges reported that a scientific consensus has emerged within the research community that at least two consecutive nights of unrestricted sleep periods are the minimum essential for recovery. Two consecutive nights' are required because, as discussed in Section IV D(2)(c), individuals' circadian rhythms decrease the length of

daytime sleep periods and daytime sleep interruptions are common.

The need for longer breaks to mitigate fatigue was also reflected in recent changes to DOT's regulations for the work hours of commercial truck drivers. On April 28, 2003, the DOT published final regulations (68 FR 22456–22517) for hours-of-service for drivers of motor carriers, which amended 49 CFR 385, 390, and 395. These regulations require a minimum 34-hour break after any period of 8 consecutive days with no more than 70 hours on duty. The intent of this 34-hour break is to provide for two consecutive sleep periods. The regulations also limit drivers to 11 hours of driving and 14 hours on duty with 10 consecutive hours off duty each day.

The importance of long breaks is also reflected in work scheduling guidelines such as EPRI NP–6748, ''Control Room Operator Alertness and Performance in Nuclear Power Plants.'' With respect to the number of consecutive shifts, EPRI recommends no more than 6–7 consecutive 8-hour shifts and no more than 3–4 consecutive 12-hour shifts. With respect to the number of consecutive days off, EPRI recommends a break of at least 48 hours between any two blocks of shifts and at least one 3–4 day break every few weeks. Similarly, a panel of independent experts in fatigue and work scheduling, convened by the NRC (NUREG/CR–4248), recommended that work schedules should include no more than 7 consecutive 8-hour shifts and at least 2 consecutive days off in any 9 days and a maximum of 4 consecutive 12-hour shifts followed by no fewer than 4 days off. Proposed § 26.199(d)(2)(iii) would establish a minimum break requirement that would be somewhat less stringent than these scheduling guidelines.

In many nations a routine 72-hour work week would be illegal (OTA, 1991). As a consequence, studies of the effects of continuous weeks of working six consecutive 12-hour shifts are sparse. However, there are a few studies concerning the work hours and performance of medical residents who, like many nuclear power plant personnel, perform largely cognitive tasks. By contrast to the majority of individuals working at nuclear power plants, medical residents are typically young adults with few family commitments. This characteristic is important because social and domestic commitments inevitably limit sleep time (Presser, 2000) and there are significant decrements in the abilities of middle-aged men to adapt to the changes in sleep schedules required by shiftwork compared to younger adults (Monk, Moline and Graeber, 1988; Carrier, *et al.*, 1997; Dawson and Campbell, 1991). However, despite lifestyle and age differences between medical residents and nuclear power plant workers, the underlying physiological processes affected by fatigue are the same in both groups. Therefore, research on the effects of cumulative fatigue on the job performance of medical residents is useful in understanding the potential effects of fatigue on nuclear power plant personnel, although generalizing the findings of research conducted with medical residents to nuclear power plant workers likely underestimates the effects of fatigue on nuclear power plant workers' job performance because of their greater average age.

Two key publications, (Baldwin, *et al.*, 2003; Baldwin and Daugherty, 2004) report survey data from more than 3,600 medical residents. These studies found that almost half of the sample worked more than 80 hours per week. When the residents who worked more than 80 hours per week were compared to those working fewer than 80 hours, it was found that the former group had a statistically higher likelihood of (1) having a serious accident or injury; (2) having a serious conflict with a co-worker; and (3) making a significant medical error. Work hours were also significantly correlated with sleep loss and ratings of stress.

Similarly, two studies were conducted comparing the performance of medical interns on their traditional schedule, which totaled 77–81 hours per week and included on-call shifts that extended up to 30 hours, with the performance of these same interns during an intervention schedule. The intervention schedule averaged approximately 65 hours per week and reduced shift lengths to a maximum of 16 hours. Lockley and colleagues found that interns on the intervention schedule had less than half the rate of attentional failures during on-call night shifts compared with their rate of attentional failures while working on the traditional schedule (Lockley, *et al.*, 2004). In another study, Landrigan and colleagues found that interns on the traditional schedule made 35.9 percent more serious medical errors and 56.5 percent more serious, non-intercepted errors than interns working on the intervention schedule. The rate of serious errors on the critical care unit was 22 percent higher during the traditional schedule. Interns made 20.8 percent more serious medication errors and 5.6 times as many serious diagnostic errors on the traditional schedule (Landrigan, *et al.*, 2004).

These studies suggest that nuclear power plant workers who work long shifts over extended periods are substantially more likely to commit errors on the job. Fatigue from extended periods of working long shifts is likely to lead to serious errors, impaired teamwork, and an increased potential for personal injuries.

Except during the first 2 weeks of a plant outage, proposed § 26.199(d)(2)(iii), in conjunction with the other proposed work hour limits, would require a schedule very similar to the intervention schedule for the medical interns. Specifically, proposed § 26.199(d)(2)(iii) would require a 48-hour break in every rolling 14-day period, effectively limiting individuals who perform the job duties listed in proposed § 26.199(a)(1)–(a)(4) from working six 12-hour shifts for more than one week at a time. For example, individuals on 12-hour shifts could work six 12-hour shifts during week 1, followed by five 12-hour shifts during week 2. As a result, these individuals would average 66 hours over the two-week period, and would be limited by proposed § 26.199(d)(1)(i) to working no more than 16 hours in any 24-hour period.

In addition to being important for permanent workers at nuclear power plants, the 48-hour break requirement would be critical to prevent and mitigate cumulative fatigue in roving outage crews and other transient workers who predominantly work during plant outages when the collective work hour controls in proposed § 26.199(f) would not frequently apply. During the stakeholder meetings discussed in Section V, many stakeholders expressed a strong desire for transient workers to be subject to work hour controls. The NRC staff considered subjecting transient workers to long-term work hour controls. However, collective work hour controls and 48-hour average group limits would not be practical, because these individuals typically work during outages when significant workloads occur. The NRC staff further considered individual long-term (quarterly and yearly) work hour limits for transient workers. However, industry representatives strongly objected because these transient individuals move from one licensee to another, and the burden of obtaining work hour information for all of these individuals from other licensees would be extremely high. In part because of the practical difficulties of controlling long-term work hours for transient individuals, the NRC developed the 48-hour break requirement as a replacement for long-term work hour limits for transient individuals.

The NRC further considered that some transient personnel include licensee employees and long-term C/Vs. Many of these individuals may move from site-to-site within a fleet during plant outage periods. For large fleets, some individuals may work much of the spring and fall outage seasons under only the individual work hour limits and break requirements in proposed § 26.199(d). The proposed 48-hour break requirement would be the single requirement that would prevent such individuals from working 72 hours per week for extended periods. The proposed 48-hour break requirement would also provide necessary breaks for all individuals who perform the duties listed in proposed § 26.199(a) during extended plant outages of more than 2 weeks in duration. In this case, the proposed 48-hour break requirement would again be the single requirement that would prevent individuals from working 72 hours per week for the entire first 8 weeks of any plant outage [collective work hour limits would apply after the first 8 weeks of any plant outage, as discussed with respect to proposed § 26.199(f)]. Working 72 hours per week for extended periods is inconsistent with the research cited in this section with respect to proposed § 26.199(d)(2)(i) and (d)(2)(ii), nor does the NRC believe it is consistent with providing reasonable assurance that individuals are fit to perform their duties. The 48-hour break requirement of proposed § 26.199(d)(2)(ii) would provide an important protection against cumulative fatigue for individuals who work consecutive outages and outages that are longer than two weeks.

Proposed § 26.199(d)(3) would be added to permit licensees to authorize waivers from the work hour controls for individuals in proposed § 26.199(d)(1) and (d)(2) for conditions that meet two criteria, which would be specified in the proposed paragraph. Exceeding the individual work hour limits would be justified for limited circumstances in which compliance with the work hour controls could have immediate adverse consequences for the protection of public health and safety or the common defense and security. Limited use of waivers also would be consistent with the Commission's position stated in the NRC's Policy on Worker Fatigue. However, as specified in proposed § 26.199(d)(3)(ii), the NRC would expect licensees to grant waivers only to address circumstances that the licensee could not have reasonably controlled.

Proposed § 26.199(d)(3)(i)(A) would be added to establish one of two criteria in the proposed rule for granting a waiver from the individual work hours controls. Specifically, proposed § 26.199(d)(3)(i)(A) would require that an operations shift manager must determine that the waiver is necessary to mitigate or prevent a condition adverse to safety, or a security shift manager must determine that the waiver is necessary to maintain the security of the facility, or a site senior-level manager with requisite signature authority must make either determination.

The NRC's Policy on Worker Fatigue recognized that ''very unusual circumstances may arise requiring deviation from the above [work hour] guidelines.'' In SECY–01–0113, the NRC noted that the frequency of guideline deviations at a substantial proportion of sites appeared to be inconsistent with the intent of the policy. The NRC believes that the authority to grant deviations from the work hour guidelines was abused by some licensees. Proposed § 26.199(d)(3)(i)(A) would more clearly articulate the NRC's expectations with respect to exceeding the work hour limits, which are that licensees must limit the granting of waivers from the work hour limits to circumstances in which it is necessary to prevent or mitigate a condition adverse to safety or to maintain the security of the plant. The proposed criterion would limit waivers to conditions that are infrequent while permitting waivers that are necessary for safety or security. For example, proposed § 26.199(d)(3)(i)(A) would permit a licensee to grant a waiver from a work hour control on the basis that the waiver is necessary to prevent a condition adverse to safety, if compliance with the work hour controls would cause the licensee to be in violation of other NRC requirements, such as the minimum on-site staffing requirements in 10 CFR 50.54(m), or would delay the recovery of failed plant equipment that is necessary for maintaining plant safety. Similarly, the NRC would consider it appropriate to grant a waiver from the proposed work hour controls on the basis that it is necessary to prevent a condition adverse to safety, if compliance with the work hour controls would cause a forced reactor shutdown, power reduction, or other similar action, as a result of exceeding a time limit for a technical specification Limiting Condition for Operation (LCO). LCOs require nuclear power plant licensees to take certain actions to maintain the plant in a safe condition under various conditions, including malfunctions of key safety systems.

The criterion for granting waivers in proposed § 26.199(d)(3)(i)(A) was the subject of considerable stakeholder comment and discussion during the public meetings described in Section V. Industry representatives stated that the criterion is overly restrictive because it would prohibit the granting of waivers for conditions that could be cost beneficial to the licensee without a substantive decrease in safety. However, as discussed with respect to proposed § 26.199(d)(2) and (d)(3), the potential for worker fatigue in conditions that would require a waiver is substantial (Baker, *et al.*, 1994; Dawson and Reid, 1997; Stephens, 1995; Strohl, 1999). Therefore, the NRC does not believe that licensees can reasonably justify the performance of risk-significant functions by individuals who have worked hours in excess of the proposed limits on the basis that granting the waiver would not have an adverse impact on safety or security. The basis for not incorporating industry's comment on this provision is detailed in Section V.

Proposed § 26.199(d)(3)(i)(A) would further require that an operations shift manager or a senior-level site manager with requisite signature authority must make the determination that a waiver is necessary to mitigate or prevent a condition adverse to safety. Similarly, the proposed rule would require that a security shift manager, or a senior-level site manager with requisite signature authority, must make the determination that a waiver is necessary to maintain the security of the facility. Operations shift managers and security shift managers have the requisite knowledge and qualifications to make the respective safety or security determinations, and making such determinations would be consistent with the scope of duties currently performed by individuals in these positions. The NRC considered industry stakeholder comments during the public meetings described in Section V, expressing concern that limiting the authority to approve waivers to operations shift managers and security shift managers could contribute to overburdening individuals in these positions and would prevent distributing the administrative burden of granting a waiver to other qualified individuals. The NRC also considered other stakeholder comments concerning the need to ensure that the determinations are made by individuals who would not be unduly influenced by schedule pressures. The NRC noted that authority to authorize deviations had been delegated by some licensees to organizational levels that appeared to be inconsistent with the guidelines in the

NRC's Policy on Worker Fatigue for work hour deviation authorizations, which indicate that deviations from the guidelines should be authorized by the plant manager or plant manager designee. Accordingly, proposed § 26.199(d)(3)(i)(A) would permit senior site managers with the signature authority of operations shift supervisors to make the safety determinations that would be required to grant waivers and senior site managers with the signature authority of security shift supervisors to make security determinations required to grant waivers.

Proposed § 26.199(d)(3)(i)(B) would be added to establish the second of two proposed criteria for granting a waiver from the individual work hour controls of proposed § 26.199(d)(1) and (d)(2). Proposed § 26.199(d)(3)(i)(B) would require that a supervisor, who is qualified to direct the work to be performed by the individual to whom the waiver will be granted and is trained in accordance with the requirements of proposed §§ 26.29 and 26.197(c), must assess the individual face to face and determine that there is reasonable assurance that the individual will be able to safely and competently perform his or her duties during the additional work period for which the waiver will be granted.

These determinations would require knowledge of the specific skills that are necessary to perform the work and the conditions under which the work will be performed in order to assess the potential for fatigue to adversely affect the ability of an individual to safely and competently perform the work. This knowledge is generally limited to individuals who are qualified to direct the work. The training required by proposed §§ 26.29 and 26.197(c) would provide the knowledge and abilities that would be essential for a supervisor to make valid assessments in this regard. Among other FFD topics, the proposed training would address the contributors to worker fatigue and decreased alertness in the workplace, the potential adverse effects of fatigue on job performance, and the effective use of fatigue countermeasures. Accordingly, the proposed training would be necessary for individuals to perform these assessments.

Proposed § 26.199(d)(3)(i)(B) would further require that supervisors must perform the assessment face to face with the individual that he or she is assessing for the waiver. This proposed requirement would ensure that the supervisor who is performing the assessment has the opportunity to observe the individual's appearance and behavior to note indications of fatigue (*e.g.*, decreased facial tone, rubbing of eyes, slowed speech) and interact with the individual to assess the individual's ability to continue to safely and competently perform his or her duties during the period for which the waiver would be granted.

Proposed § 26.199(d)(3)(i)(B) would also require that the supervisory assessment must address, at a minimum, the potential for acute and cumulative fatigue, considering the individual's work history for at least the past 14 days and the potential for circadian degradations in alertness and performance, considering the time of day for which the waiver will be granted. The potential for acute fatigue can be practically assessed by estimating the total number of continuous hours the individual will have worked by the end of the work period for which the waiver is being considered. The potential for cumulative fatigue can be practically assessed by reviewing the individual's work schedule during the past 14 days to determine (1) whether the individual had adequate opportunity to obtain sufficient rest, considering the length and sequencing of break periods; (2) whether the available sleep periods occurred during the night or at other times when sleep quality may be degraded; and (3) the potential for transitions between shifts (*e.g.*, from days to nights) to have interfered with the individual's ability to obtain adequate rest. The potential for circadian degradations in alertness and performance can be practically assessed by considering the time of day or night during which the work would be performed, as well as the times of day of the individual's recent shift schedules. Proposed § 26.199(d)(3)(i)(B) would in effect require supervisors to address the three work schedule factors (*i.e.*, shift timing, shift duration, and speed of rotation) that are generally considered to be the largest determinants of worker fatigue (Akerstedt, 2004; McCallum, *et al.*, 2003; Mallis, *et al.*, 2002; Folkard and Monk, 1980; Rosa, 1995; Rosa, *et al.*, 1996). In determining the scope of the proposed assessment, the NRC also considered the need for licensees to be able to focus the assessment on information that would be readily available and could be verified.

Proposed § 26.199(d)(3)(i)(B) would further require that the supervisory assessment for granting a waiver must address the potential for fatigue-related degradations in alertness and performance to affect risk-significant functions, and whether it would be necessary to establish controls and conditions under which the individual will be permitted to perform work. This proposed requirement is consistent with the NRC's Policy on Worker Fatigue, which states that ''the paramount consideration in such authorizations shall be that significant reductions in the effectiveness of operating personnel would be highly unlikely.'' However, proposed § 26.199(d)(3)(i)(B) would require the supervisor to identify any risk-significant functions that may be compromised by worker fatigue, thereby focusing the assessment on worker activities that have the greatest impact on the protection of the public, considering the types of skills and abilities that are most sensitive to fatigue-related degradations.

Proposed § 26.199(d)(3)(i)(B) would also require the supervisor to identify any additional controls and conditions that he or she considers necessary to grant the individual a waiver from a work hour control. For example, applicable controls and conditions may include, but would not be limited to: (1) Peer review and approval of assigned job tasks; (2) assignment of job tasks that are non-repetitive in nature; (3) assignment of job tasks that allow the individual to be physically active; and (4) provisions for additional rest breaks. The proposed requirement to consider establishing controls and conditions would be necessary to ensure that licensees take steps to mitigate fatigue from an extended work period and reduce the likelihood of fatigue-related errors adversely affecting public health and safety or the common defense and security.

Proposed § 26.199(d)(3)(ii) would be added to require licensees, to the extent practicable, to grant waivers only in circumstances that the licensee could not have reasonably controlled. This proposed requirement would be necessary because conditions meeting the waiver criteria that are specified in proposed § 26.199(d)(3)(i) could routinely result from inadequate staffing or work planning. Licensees have authorized deviations from their technical specification limits on work hours for these reasons in the past. However, because of the significant adverse effects of worker fatigue, as detailed in Section IV. D, waivers should be used infrequently and only when necessary to protect the public. Licensees should take all reasonable care to ensure the use of waivers is minimized. Therefore, proposed § 26.199(d)(3)(ii) would prohibit the use of waivers in lieu of adequate staffing or proper work planning, for example, but would permit the use of waivers for circumstances that the licensee could

not have reasonably controlled, which may include, but would not be limited to, equipment failures or a sudden increase in the personnel attrition rate.

Proposed § 26.199(d)(3)(iii) would be added to require that the face-to-face supervisory assessment required in proposed § 26.199(d)(3)(i)(B) must be performed sufficiently close in time to the period during which the individual will be performing work under the waiver to ensure that the assessment would provide a valid assessment of the potential for worker fatigue during the extended work period. This proposed requirement would be necessary because worker alertness and the ability to perform can change markedly over several hours (Baker, *et al.*, 1990; Dawson and Reid, 1997; Frobert, 1997; Folkard and Monk, 1980; Rosa, 1995). These changes can be particularly dramatic if fatigue from sustained wakefulness coincides with circadian periods of decreased alertness (Baker, *et al.*, 1990; Gander, *et al.*, 1998; Rosekind, 1997; Folkard and Tucker, 2003; Carrier and Monk, 2000). Therefore, the proposed rule would require licensees to conduct supervisory assessments within a time period that provides reasonable assurance that the individual's condition will not substantively change before work is performed under the waiver.

Proposed § 26.199(d)(3)(iii) would establish a period of 4 hours before the individual begins working under the waiver as the period within which the supervisory assessment must be performed. In establishing a maximum time period the NRC considered several factors. Conducting the assessment as close in time as practical to the period during which the individual will perform work under the waiver would provide the greatest assurance of a valid assessment. However, conducting the assessment immediately before the individual will begin performing work under the waiver could, in some circumstances, cause the timing of assessments to conflict with the conduct of shift turnovers and other practical administrative and operational constraints. Additionally, assessments for granting waivers from the longer-term individual limits (*e.g.*, the maximum number of work hours in 7 days) would be less sensitive to the specific timing of the assessment. However, certain licensees have periodically authorized blanket deviations from technical specification work hour limits days and weeks in advance of the actual performance of the work. A maximum limit of 4 hours would address the need for an enforceable requirement that would provide reasonable assurance of valid assessments, and would take into account the relevant technical and practical considerations. An added benefit of the proposed requirement is that it would prevent the simultaneous granting of blanket waivers for large groups of individuals that do not take into account each individual's level of fatigue.

Proposed § 26.199(d)(3)(iv) would be added to require licensees to document the bases for granting waivers from the individual work hour controls of proposed § 26.199(d)(1) and (d)(2). The proposed paragraph would require licensees to document the circumstances that necessitate the waiver; a statement of the scope of work and time period for which the waiver is approved; and the bases for the determinations that would be required by proposed § 26.199(d)(3)(i). The proposed documentation would be necessary to support NRC inspections of compliance with requirements for granting waivers from the work hour limits as well as for the licensee self-assessments of the effectiveness of implementing work hour controls that would be required under proposed § 26.199(j) [Reviews].

Proposed § 26.199(e) [Self-declarations during extended work hours] would be added to require licensees to take immediate action in response to a self-declaration [as discussed with respect to proposed § 26.197(b)(1)] by an individual who is working under, or being considered for, a waiver from the work hour controls in proposed § 26.199(d)(1) and (d)(2). Licensees would be required to immediately stop the individual from performing any duties listed in proposed § 26.199(a) unless the individual is required to continue performing those duties under other requirements of 10 CFR Chapter I, such as the minimum control room staffing requirements in 10 CFR 50.54(m). If other requirements make it necessary for the individual to continue working, the proposed paragraph would require the licensee to immediately take action to relieve the individual. For example, the licensee would immediately begin a call-in procedure for another individual to fill the required position and remove the individual from duties as soon as relief becomes available.

The proposed rule would add this requirement because correct performance of the job duties specified in proposed § 26.199(a) is of critical importance in maintaining public health and safety and the common defense and security. In addition, there is a significantly increased potential for fatigue-related errors when individuals work more than the maximum work hours or obtain less rest than the minimum rest requirements of proposed § 26.199(d)(1) and (d)(2). Individuals who would be working extended hours under a waiver would have a clear and legitimate basis for a self-declaration of being unfit for duty because of fatigue. Further, by self-declaring fatigue, the individual would have effectively provided an assessment of his or her ability to continue to safely and competently perform these critical duties. Several studies have indicated a tendency for individuals to underestimate their level of fatigue (Wylie, *et al.*, 1996; Dinges, 1995; Rosekind and Schwartz, 1988). Therefore, it is very likely that an individual who would make a self-declaration of fatigue is potentially more impaired than he or she realizes.

The proposed rule would not require licensees immediately to relieve an individual who self-declares when it is necessary for the individual to continue performing his or her duties under other requirements of 10 CFR Chapter I, because the failure to meet minimum staffing or similar requirements would, in the majority of cases, have a greater potential to adversely affect public health and safety and the common defense and security than permitting a fatigued individual to continue performing his or her duties for a limited period of time. Further, in these circumstances, licensees could implement any fatigue mitigation strategies they deem necessary while the individual remains on duty. Fatigue mitigation measures in these circumstances may include, but would not be limited to, controls on the type of work that the individual may perform until he or she is relieved (*e.g.*, physical or mental, tedious or stimulating, individual or group, risk-significant or not) and an increased level of supervision (continuous or intermittent) and other oversight (*e.g.*, peer checks, independent verifications, quality assurance reviews, and operability checks).

Proposed § 26.199(e)(1) would be added to permit licensees to reassign an individual who has made a self-declaration of fatigue to perform other duties than those specified in proposed § 26.199(a). The proposed rule would include this flexibility because, although an individual may not be fit to perform the activities specified in proposed § 26.199(a), the individual may be able to safely and competently perform other duties. Other duties may include, but would not be limited to, tasks that require skills that are less

susceptible to degradation from fatigue or do not have the potential to adversely affect public health and safety or the common defense and security if the individual commits fatigue-related errors. The proposed rule would permit licensees to reassign individuals who have made a self-declaration of fatigue to other duties, if the results of a fatigue assessment (as would be required under proposed § 26.201 [Fatigue assessments]) indicate that he or she is fit to perform them, because permitting the individual to remain at work and continue performing such duties would not have the potential to adversely impact public health and safety or the common defense and security.

However, proposed § 26.199(e)(2) would be added to require the licensee to permit or require an individual who has made a self-declaration to take a rest break of at least 10 hours before the individual returns to performing any duties listed in proposed § 26.199(a). The proposed rule would include this requirement to ensure that individuals who have self-declared would be given an opportunity to sleep before they are permitted to resume performing any duties that have the potential to adversely affect public health and safety or the common defense and security. Sleep is widely considered the only non-pharmacological means of reducing fatigue. As discussed with respect to proposed § 26.199(d)(2)(i), a 10-hour rest break generally allows individuals to obtain the 7–8 hours of sleep that is recommended by most experts for maintaining human performance (National Sleep Foundation, 2001; Dinges, *et al.*, 1997; Belenky, *et al.*, 2003; Akerstedt, 2003; Monk, *et al.*, 2000; Rosekind, *et al.*, 1997; Rosa, 1995).

Although one sleep period of 7–8 hours may be insufficient to ensure full recovery from excessive fatigue, nothing in the proposed rule would preclude an individual in this circumstance from making a second self-declaration of fatigue, if the individual believes that he or she remains unable to safely and competently perform his or her duties following the rest break. Section I. B of the May 10, 2002, NRC Regulatory Issue Summary (RIS) 2002–07: ''Clarification of NRC Requirements Applicable to Worker Fatigue and Self-Declarations of Fitness-for-Duty,'' addressed the applicability of the protections of 10 CFR 50.7, ''Employee Protection,'' to workers who self-declare that they are unfit for duty as a result of fatigue.

Proposed § 26.199(f) [Collective work hour limits] would be added to require licensees to control the collective work hours of each group of individuals who are performing the job duties listed in proposed § 26.199(a) and ensure that the collective work hours of each job duty group do not exceed an average of 48 hours per person per week in any averaging period. (The proposed rule's requirements for calculating collective work hours are discussed with respect to proposed § 26.195(b)(2) [Collective work hours].) The requirements of proposed § 26.199(f) would address the control of work hours over extended periods of time, by contrast to the short-term work hour controls in proposed § 26.199(d) [Work hour controls for individuals].

The objectives of the 48-hour collective limit during normal plant operations would be to: (1) ensure that the routine work hours of individuals who are performing the duties listed in proposed § 26.199(a)(1)–(a)(5) do not adversely affect their abilities to safely and competently perform their duties; (2) define an enforceable upper limit for the nominal 40-hour work-week policy stated in GL 82–12; and (3) continue to permit licensees to manage overtime in a manner that reflects the differing desires and capabilities of individuals with respect to work hours.

The proposed collective work hour controls would ensure that licensees manage the potential for cumulative fatigue (*i.e.*, fatigue from successive weeks or months of overwork or inadequate rest) to adversely affect the abilities of individuals to perform functions that are important to maintaining the safety and security of the plant. The 48-hour collective work hour limit would prevent excessive use of the maximum work hours and minimum rest breaks that would be permitted under the proposed individual work hour controls. In addition, proactively controlling work hours to a group average of no more than 48 hours per week would likely reduce the need for licensees to grant waivers of the individual limits in proposed § 26.199(d)(1) and (d)(2). Individuals would be better rested and less susceptible to cumulative fatigue from the increased work hours that are common during outages and are necessary to augment security staffing during increased threat conditions, during which times licensees would not be required to implement group work hour controls, subject to the restrictions listed in proposed § 26.199(f)(1)–(f)(5). Therefore, the 48-hour collective work hour limit would be essential for limiting cumulative fatigue and would augment other important elements of licensees' fatigue management programs.

The collective work hour control concept would be consistent with a fundamental objective of the NRC's Policy on Worker Fatigue. The Policy, promulgated via GL 82–12, is intended to ensure that there are a sufficient number of operating personnel available to ''maintain adequate shift coverage without routine heavy use of overtime.'' Routine overtime can cause cumulative fatigue, thereby degrading workers' abilities to safely and competently perform their tasks. The proposed requirement would, in effect, limit groups of individuals to no more than 20 percent overtime in excess of the nominal 40-hour work week objective of the NRC's Policy on Worker Fatigue during the periods in which the proposed requirement would be applicable (typically during normal plant operations).

The collective work hour controls of proposed § 26.199(f) would also codify, in part, the requirements established by Order EA–03–038 for the control of work of hours for specified nuclear power plant security personnel (SRM–COMSECY–03–0012, dated March 31, 2003). As described with respect to § 26.199(f)(2), the NRC has received numerous allegations from nuclear security officers that certain licensees have required them to work excessive amounts of overtime over long periods due to the post-September 11, 2001, threat environment. These individuals questioned their readiness and ability to perform their required job duties because of the adverse effects of cumulative fatigue. The NRC reviewed the actual hours worked by security personnel and determined that, in the vast majority of cases, individual work hours did not exceed the guidelines specified in the NRC's Policy on Worker Fatigue. However, the review confirmed that individuals had been working up to 60 hours per week for extended periods. Individual concerns regarding their fitness for duty, in light of work schedules that did not exceed the specific guidelines of the policy, as well as relevant technical research supporting the basis for cumulative fatigue, led the NRC to conclude that the work hour guidelines of the Policy are inadequate for addressing cumulative fatigue. The NRC obtained additional support for this conclusion following a review of worker fatigue concerns and work hours during a long-term outage at the Davis Besse nuclear plant (NRC Inspection Report 05000346/2004003, dated March 31, 2004, ADAMS Accession No. ML040910335).

Through public interactions during the development of Order EA–03–038, the NRC developed a collective work

hour requirement, rather than a limit on individual work hours, in response to stakeholder input regarding differences among individuals in their abilities and desires to work overtime. Similarly, the proposed rule would permit a group of workers who are performing similar duties to average 48 hours of work over a period not to exceed 13 weeks [proposed requirements for calculating collective work hours are discussed with respect to proposed § 26.199(b)(2)]. Because the proposed limit would be imposed on a job duty group's average number of work hours during an averaging period, licensees would continue to be permitted to distribute overtime among their workers based on their assessment of individuals' abilities and desires to work overtime. The proposed averaging methodology would not unduly limit individuals from working voluntary overtime, and would effectively result in adequate opportunities for days off and limited forced overtime. As discussed with respect to proposed § 26.199(b)(2), requiring licensees to average collective work hours over a period up to 13 weeks in length would establish a limit on the long-term scheduling of work hours that would support timely identification and corrective action for conditions that could contribute to cumulative fatigue, but would not be overly sensitive to short-term variations in workload. Short-term variations in workload have limited potential for causing cumulative fatigue.

The NRC considered several types and sources of information in deciding to propose a collective work hour limit of 48 hours per person per week. These included: (1) Past recommendations from experts and expert panels on work scheduling and maintaining worker alertness in the nuclear industry; (2) surveys of nuclear power plant workers on their desire and ability to work overtime; (3) data on the amount of overtime worked by security personnel; and (4) the requirements and practices in other industries.

Two of the most comprehensive documents on worker fatigue in the U.S. nuclear industry are EPRI NP–6748 (Baker, *et al.*, 1990) and NUREG/CR–4248. The collective work hour limit is a new concept developed to meet the NRC's objectives, while also addressing the unique circumstances and specific concerns of the stakeholders. As a consequence, neither of the documents provides specific guidelines for establishing collective work hour limits. Nevertheless, the documents contain information and guidelines relevant to the proposed requirement. Collectively, the shift scheduling guidelines of EPRI NP–6748 and NUREG/CR–4248 suggest a maximum routine work schedule of 44–46 hours per week. This maximum includes an assumed turnover time of 30 minutes per shift. The NRC also considered the recommendations of experts concerning the use of overtime. The expert panel that developed the guidelines for NUREG/CR–4248 also addressed use of overtime and recommended an individual limit of 213 hours per month, including shift turnover time. The expert panel emphasized that overtime should not be approved for an entire crew, indicating that this individual maximum on overtime should not be a group norm. The collective work hour limit of 48 hours per person per week would establish a requirement that is in the middle of the range of work hours defined by the maximum routine scheduling limits and maximum individual overtime, and also provides for individual differences with respect to vulnerability to fatigue. The expert panel further recommended that the NRC authorize no more than 400 hours of overtime in a year. A limit of 400 hours of overtime annually is very similar to a 48-hour average (*i.e.*, 52 weeks × 8 hours = 416 hours).

In addition to considering the opinions of experts in work scheduling and fatigue, the NRC staff considered the opinions of individuals who work in nuclear power plants. These opinions were expressed in surveys conducted by PROS and EPRI.

In 2002, PROS surveyed the attitudes of its members towards work hours and the development of a proposed rule concerning fatigue of workers at nuclear power plants (ADAMS Accession No. ML05270310). One of the survey questions was, ''What is your personal tolerance for overtime?'' The responses indicated that 75 percent of the respondents had a ''tolerance'' for up to 350 hours per year. Only 13 percent expressed a tolerance for more than 350 hours of overtime.

The work conducted in the development of EPRI NP–6748 also included a survey of operators. The results were consistent with the PROS survey, indicating that the amount of overtime that operators wanted to work ranged from 100 to 400 hours per year. Similar results were obtained in a survey of nuclear power plant personnel in the United Kingdom.

A 48 hour per person per week collective work hour limit would permit job duty groups to average approximately 400 hours of overtime, or 2400 hours of work, in a year. Therefore, the proposed collective work hour limit would be consistent with the upper extreme of overtime hours for which nuclear power plant personnel have expressed a tolerance. In addition, the proposed collective work hour limit would be less restrictive than the limit implied by worker opinions because the 48-hour average would exclude hours worked during the first 8 weeks of outages.

In addition to expert and worker opinions, the NRC considered industry practices concerning the use of overtime for security personnel. The NRC collected work scheduling data for security personnel at all nuclear power plants following the events of September 11, 2001, as part of the process of evaluating the need to require licensees to implement compensatory measures to address security personnel fatigue. The NRC's analysis, as described in letters from the NRC to licensees (*e.g.*, ADAMS Accession No. ML031880257), indicated that at some of the sites (31 percent), security personnel worked more than 55 hours per week and at a few sites (11 percent) they worked 60 hours or more per week. The data also indicated that at the majority of the sites (58 percent) security personnel typically worked 50 hours per week or fewer. The NRC also reviewed work hours data collected by NEI (ADAMS Accession No. ML003746495) and found that, although there was substantial variation among sites, the average annual overtime for licensed operators was 375 hours and 361 hours for non-licensed operators. These findings suggest that an average work week of 48 hours is an achievable objective for security personnel as well, although it was not a current practice at a small fraction of nuclear power plants.

The proposed 48-hour per person per week collective work hour limit would be comparable to restrictions on workers in other industries within the U.S. and the limits imposed by other countries that regulate overtime for nuclear power plant workers. The NRC staff considered that cumulative fatigue of nuclear power plant personnel is addressed in several other countries through individual monthly and/or annual work hours limits on overtime. These limits, summarized in Table 6 of Attachment 1 to SECY–01–0113, are generally more restrictive than the proposed 48-hour collective work hour limit because they permit fewer hours of work and provide less flexibility because the limits apply to individuals rather than groups (*e.g.*, Finland limits overtime to 250 hours per year). Table 5 of Attachment 1 to SECY–01–0113 includes a summary of limits on work hours in other industries in the U.S.

The NRC also considered the requirements of the European Union (EU) Working Times Directive (WTD) (Council Directive, 1993). The WTD establishes requirements concerning the working hours of workers across various industries in EU member nations. The WTD establishes a requirement that ''workers cannot be forced to work more than 48 hours per week averaged over 17 weeks.''

In addition, the amount of overtime permitted by the proposed 48-hour collective work hour limit would be greater than the amount used in most continuous operations. Circadian Technologies Incorporated, a consulting firm that is expert in fatigue management, regularly surveys U.S. and Canadian companies conducting 24/7 operations. Their 2000 survey of 550 major companies indicates that shift workers at 89 percent of the companies surveyed averaged less than 400 hours of overtime per year (Circadian Technologies Incorporated, 2000). Circadian Technologies Incorporated noted that average overtime for workers in extended operations in the U.S. was 12.6 percent above the standard work-week in the first 8 months of 2003, with utilities averaging 14.9 percent (Circadian Technologies Incorporated, 2003).

Therefore, the proposed 48-hour collective work hour requirement would establish an appropriate upper limit on work hours while the plant is operating. The proposed limit would be consistent with expert and worker opinions concerning work hours, provide substantial licensee flexibility, and recognize individual differences in the ability to work overtime while remaining fit to safely and competently perform duties.

Proposed § 26.199(f)(1) would be added to exclude the first 8 weeks of plant outages from the collective work limit in proposed § 26.199(f) for the job duty groups that are specified in proposed § 26.199(a)(1)–(a)(4) (*i.e.*, certain operations, maintenance, chemistry, health physics, and fire brigade personnel). During the first 8 weeks of a plant outage, proposed § 26.199(d) would require these individuals to be subject to individual work hour controls. After the first 8 weeks of a plant outage, proposed § 26.199(f)(1) would require licensees to resume controlling the work hours of these individuals in accordance with the collective work hour limit in proposed § 26.199(f).

The collective work hour limits of proposed § 26.199(f) would address the long-term control of work hours while permitting the occasional use of limited overtime for circumstances such as equipment failure, personnel illness, or attrition. The NRC proposes to address the control of work hours during short- and medium-length outages separately and permit licensees to waive the collective work hour controls for the first 8 weeks of an outage in proposed § 26.199(f)(1). In developing the proposed permission to exclude the first 8 weeks of an outage from the collective work hour limits, the NRC considered several factors, including current policy, the bases for the policy, and lessons learned from the policy implementation.

The NRC's Policy on Worker Fatigue provides guidelines for controlling work hours, ''on a temporary basis,'' during periods requiring substantial overtime. The Policy reflects the NRC's recognition that outages are unique, relatively short-term, and involve levels of activity that are substantially higher than most non-outage operating periods. The policy also reflects the NRC's understanding that, although individuals are capable of working with limited rest without degraded performance for short periods of time, research has shown that the ability to sustain performance without adequate rest is clearly limited (Knauth and Hornberger, 2003; Pilcher and Huffcutt, 1996; Van Dongen, *et al.*, 2003), as discussed in Section IV. D. However, as noted in SECY–01–0113, Attachment 1, the NRC has never defined the term, ''temporary basis,'' as used in the Policy. As a result, licensees have relied on this phrase in the guidelines to permit extended work hours for periods ranging from a few days to more than a year. Industry experience with conditions such as sustained plant shutdowns and the increased work hours of security personnel following the terrorist attacks of September 11, 2001, have demonstrated the need for the NRC to establish clearer and more readily enforceable requirements limiting the sustained use of extended work hours.

Differences between individuals, job demands, and work-rest schedules can each have a substantial effect on the period of time that an individual can work without compromising his or her ability to safely and competently perform duties. As a result, studies of work scheduling and fatigue provide insights into the potential for cumulative fatigue of workers, but do not provide a direct basis for establishing the maximum acceptable period for excluding plant outage work hours from the collective work hour controls. In setting the exclusion period for plant outages at 8 weeks, the NRC considered that, by the end of 8 weeks of work at the limits permitted by proposed § 26.199(d), individuals who are performing the duties specified in proposed § 26.199(a)(1)–(a)(4) will have (1) worked 540 hours, including more than 200 hours of overtime, and (2) missed as many as 17 normally scheduled days off. The loss of the 17 normally scheduled days off would be a reduction of 60 percent in the time available to recover and prevent cumulative fatigue. Further, with each passing week of an outage involving increased work hours and decreased time off, deferring daily living obligations becomes increasingly difficult, causing increased pressure on individuals to reduce their sleep time in order to meet the demands of both work and daily life, resulting in an increased potential for cumulative fatigue.

In addition to considering the potential for cumulative fatigue, the NRC considered current industry data on the duration of plant outages in determining whether the cost to licensees imposed by the proposed 8-week outage exclusion period are justified in terms of the benefit. The average outage duration, as indicated by outage data from 2000–2002, is approximately 39 days (Information System on Occupational Exposure Database, ADAMS Accession No. ML050190016). Eighty-nine percent of plant outages during this period were less than 8 weeks in duration. In reviewing the frequency of outages, by duration, the NRC found that it would be necessary to increase the exclusion period substantially to address a marginal number of additional outages of longer lengths. This increase in the exclusion period would substantially increase the period of time that work hours would not be controlled by the proposed 48-hour collective work hour limit, which would be the proposed rule's principal requirement to prevent cumulative fatigue. During the exclusion period, individuals would only be assured of a 24-hour break every 7 days and a 48-hour break every 14 days, under the individual work hour limits in proposed § 26.199(d)(1) and (d)(2). Individuals who work 12-hour shifts would average 66 hours per week, a rate of more than 150 percent of their normally scheduled hours with less than half of their normally scheduled days off for recovery, for a period that would exceed 2 months. These extended work hours would substantively increase the potential for cumulative fatigue and fatigue-related personnel errors. By contrast, decreasing the exclusion period to less than 8 weeks would increase the number of

outages that would be, in part, subject to the collective work hour controls, potentially increasing the duration and cost of those outages. Decreasing the exclusion period by 1 or 2 weeks could also decrease the potential for cumulative fatigue, but the magnitude of the decrease would be difficult to quantify and the benefit would unlikely justify the costs.

Excluding the first 8 weeks of an outage would be consistent with the NRC's objective of ensuring that licensees provide adequate shift coverage without routine heavy use of overtime. The proposed exclusion period would be limited to plant outages, which occur regularly, but with limited frequency. In addition, the proposed rule would limit the duration of the exclusion period to 8 weeks in order to limit the potential for cumulative fatigue.

Proposed § 26.199(f)(2)(i) would be added to establish a collective work hour limit of 60 work hours per person per week for personnel who are performing the job duties specified in proposed § 26.199(a)(5) (*i.e.*, security personnel) during the first 8 weeks of a plant outage or a planned security system outage. The proposed rule would permit a 60-hour per person per week collective work hour limit as an exception to the 48-hour collective work hour limit in proposed § 26.199(f). The proposed exception for security personnel would accommodate the short-term demand for increased work hours associated with these outages while limiting cumulative fatigue. Therefore, the proposed requirement would provide reasonable assurance that security personnel would remain capable of safely and competently responding to a security incident or an increased security threat condition, should one occur during or shortly after a period of increased work hours.

The basis for excluding work hours during the first 8 weeks of an outage from the proposed requirement for a 48-hour group average is discussed with respect to proposed § 26.199(f)(1). However, that exclusion would be only applicable to individuals who are performing the duties listed in proposed § 26.199(a)(1)–(a)(4) during plant outages. During the first 8 weeks of a plant outage, those individuals would remain subject to the proposed individual work hour controls but their work hours would not be limited by any collective work hour requirement. By contrast, proposed § 26.199(f)(2)(i) would require security personnel to be subject to a 60-hour per person per week collective work hour limit, in addition to the proposed individual work hour limits, during the first 8 weeks of a plant outage.

Proposed § 26.199(f)(2)(i) also would permit licensees to exclude security personnel from the 48-hour per person per week collective work hour limit during the first 8 weeks of a planned security system outage, during which time they would be subject to a 60-hour per person per week collective work hour limit. Planned security system outages are typically of very short duration (days), and the NRC does not expect that planned security system outages will exceed 8 weeks in length. However, the proposed rule would establish the 8-week limit for planned security system outages in order to simplify implementation of the rule by applying identical exclusion periods for all outages and increased threat conditions. Additionally, the ability of security personnel to safely and competently perform their duties during these varying outages and increased threat conditions is based on the length of time individuals work additional overtime, not on the nature of the site condition.

The proposed provision would codify, in part, requirements established by Order EA–03–038, although it would limit the exclusion period to 8 weeks instead of the 120-day exclusion period that is permitted in Order EA–03–038, for the reasons discussed above. Since September 11, 2001, the NRC has received reports of nuclear security officers found asleep while on duty. In addition, the NRC received numerous allegations from nuclear security officers that certain licensees have required them to work excessive amounts of overtime over long periods due to the post-September 11 threat environment. The nuclear security officers questioned their readiness and ability to perform their required job duties because of the adverse effects of cumulative fatigue and stated that they feared reprisal if they refused to work assigned overtime. The NRC received similar information from newspaper articles and from interactions with public stakeholder groups. For example, the Project on Government Oversight (POGO) issued a report entitled, ''Nuclear Power Plant Security: Voices from Inside the Fences,'' and submitted this report to the NRC staff (ADAMS Accession No. ML031670987). POGO interviewed more than 20 nuclear security officers protecting 24 nuclear reactors (at 13 plants) to obtain material for its report. POGO reported that the security officers who were interviewed said, ''Their plants are heavily relying on increased overtime of the existing guard force. * * * These guards raised serious concerns about the inability to remain alert.'' After reviewing the work hours and FFD concerns of security personnel subsequent to September 11, 2001, the NRC issued Order EA–03–038 to limit the work hours of security personnel and ensure that they remain capable of safely and competently performing their duties. The Order required compensatory measures for limiting work hours to a collective work hour average of 48 hours per person per week during normal operations, as well as limiting work hours to an average of 60 hours per week for planned plant outages and planned security system outages.

Ensuring that work schedules incorporate adequate break periods is an important mitigation strategy for cumulative fatigue. The NRC's initial concept for compensatory measures to prevent fatigue of security personnel from the long work hours of outages included a feature that required a 48-hour break in any 7-day period for periods of elevated overtime that exceeded 45 days (ADAMS Accession No. ML030300470). Through stakeholder interactions during development of the Order, the NRC concluded that a 60-hour collective work hour limit would be an effective alternative to meet the same objective and also provided more flexibility. The proposed 60-hour limit would ensure that security force personnel who work a 12-hour shift receive, on average, 2 days off in every 7-day period, thereby reducing the potential for cumulative fatigue. The need for periodic long breaks was discussed with respect to proposed § 26.199(d)(2)(ii) and (d)(2)(iii).

For several reasons, control of work hours for security personnel must be more stringent than for other individuals who would be subject to the proposed work hour controls. First, security personnel are the only individuals at nuclear power plants who are entrusted with the authority to apply deadly force. Decisions regarding the use of deadly force are not amenable to many of the work controls (e.g., peer checks, independent verification, post-maintenance testing) that are implemented for other personnel actions at a nuclear plant to ensure correct and reliable performance. Second, unlike most other work groups, security personnel are typically deployed in a configuration such that some have very infrequent contact with other members of the security force, or other plant personnel. A lack of social contact can exacerbate the effects of fatigue on individuals' abilities to remain alert (Horne, 1988). Third, these

deployment positions can be fixed posts where very little physical activity is required, further promoting an atmosphere in which fatigue could transition into sleep. Fourth, many security duties are largely dependent on maintaining vigilance. Vigilance tasks are among the most susceptible to degradation from fatigue (Rosekind, 1997; Monk and Carrier, 2003). Finally, unlike operators, security forces lack automated backup systems that can prevent or mitigate the consequences of an error caused by fatigue.

The proposed requirement would also differ from that in Order EA–03–038 by requiring licensees to meet 60-hour per person per week collective work hour limit during unplanned plant outages. Order EA–03–038 currently does not impose collective work hour limits for these conditions. As discussed in the preceding paragraph, security duties are particularly susceptible to fatigue. Therefore, the NRC considers that the proposed 60-hour per person per week collective work hour limit for security personnel should only be waived in cases in which: (1) Licensees would be unable to sufficiently plan for the increased security demands; and (2) the increased potential for fatigue-induced errors is outweighed by the need for a higher complement of security personnel on shift to maintain the common defense and security. In the case of unplanned security system outages, although licensees would be unable to sufficiently plan for the increased security demands that typically accompany plant outages, the increase in those demands is directly due to the need to return the plant to operation (such as additional guards needed to support maintenance activities), not the need to maintain the common defense and security (as is the case with security system outages). The increased potential for fatigue-induced errors under the greatly increased work hours that would be permitted in the absence of collective work hour controls could not be justified by the economic benefit gained by licensees.

Proposed § 26.199(f)(2)(ii) would be added to establish a collective work hour limit of 60 hours per person per week for security personnel during the actual conduct of Force-on-Force (FOF) exercises. The proposed rule would include a 60-hour per week collective work hour limit for security personnel as an exception to the 48-hour collective work hour limit in proposed § 26.199(f). The proposed exception would accommodate the short-term demand for increased work hours associated with FOF exercises while limiting cumulative fatigue, thereby providing reasonable assurance that security personnel will remain capable of safely and competently responding to a security incident or increased threat condition, should one occur during or shortly after the conduct of FOF exercises. The basis for requiring security personnel to be subject to a 60-hour per person per week collective work hour limit, in addition to the individual work hour limits, in lieu of waiving the group average limits completely, is discussed with respect to proposed § 26.199(f)(2)(i).

The proposed 60-hour collective work hour limit during FOF exercises would be consistent with the relaxation to Order EA–03–038, granted October 23, 2003. During public meetings concerning Order EA–03–038, industry stakeholders commented that the FOF exercises warrant special consideration because NRC participation in the exercises causes some aspects of the exercises to be outside industry control, and because of the short-term and unique staffing demands imposed on licensees during the exercises. In addition, industry stakeholders have commented that: (1) Hiring extra security officers for such short-term demands would be inefficient and injurious to workforce stability; (2) imposing a staffing level requirement on licensees sufficient to support the FOF exercises would result in staff levels greater than those routinely needed; and (3) the benefit of conducting these exercises far outweighs the additional burden of the person-hours expended. The NRC agrees that the conduct of the pilot and annual FOF exercises warrant special consideration because: (1) The benefits of conducting a FOF exercise outweigh concerns regarding work-hour limits; (2) the exercises are infrequent and intensive efforts conducted over a short-term period; and (3) the burden to meet the significant staffing demands during the exercises would be very high if work hours were limited to a collective average of 48 hours per person per week.

Proposed § 26.199(f)(2)(iii) would be added to provide an exception to the collective work hour limits for security personnel for the first 8 weeks of an unplanned security system outage or an increased threat condition. The proposed exception would codify, in part, the compensatory measures required by Order EA–03–038. However, Order EA–03–038 provides an exception from the collective work hour limits in the compensatory measures for these conditions for a period up to 120 days. Proposed § 26.199(f)(2)(iii) would establish a more stringent exception period.

Unplanned security system outages and increased threat conditions require extensive increases in security force labor in terms of compensatory measures. These increases can make it very difficult to maintain work hour controls during these periods, especially because licensees are unable to plan in advance for these circumstances. Although the increased work hours increase the potential for cumulative fatigue, other proposed fatigue management requirements, including the individual work hour controls in proposed § 26.199(d)(1) and (d)(2), would provide reasonable assurance of guard readiness during the exception period. Therefore, the benefit to plant security of ensuring adequate staffing during such unplanned conditions would outweigh the potential for excessive worker fatigue.

Staffing to maintain work hours within the limits of the proposed collective work hour controls would not be practical because it would require licensees to maintain security staffing at levels that would be excessive for the vast majority of circumstances. Limiting periods of extended work hours for security personnel to 8 weeks brings security personnel closer to the requirements for the other proposed exclusion periods, simplifying the rule and its implementation. Further, the cost to licensees of the compensatory measures required to address security system outages is significant, and most security systems are modular. Therefore, an unplanned security system outage is unlikely to exceed 8 weeks. Outages of this duration have been uncommon. Therefore, reducing the exclusion period from 120 days to 8 weeks would be unlikely to have a practical impact on licensees.

In the case of an increased threat condition, the Department of Homeland Security has refined their threat system to compartmentalize increases in threat conditions for individual business sectors and regions of the country. Also, since the inception of the system, there has never been an increase for any period that exceeded 6 weeks. An event that would cause NRC-regulated sites to adopt an increase over 8 weeks would likely mean a significant domestic attack had occurred. In this event, proposed § 26.199(f)(5) would provide a means for extending the proposed 8-week exclusion period, as discussed with respect to that provision.

Proposed § 26.199(f)(2)(iv) would be added to clarify the instances in which security personnel would be subject to a collective work hour limit for certain instances in which multiple plant conditions exist. As discussed with

respect to proposed § 26.199(f)(2)(iii), licensees would not be required to control the collective work hours of security personnel during the first 8 weeks of an increased threat condition. Proposed § 26.199(f)(2)(iv) would establish requirements for implementing this exception should an increased threat condition occur concurrently with a plant outage or planned security system outage. The proposed exception would codify, in part, an exception to group work hour controls permitted by Order EA–03–038.

As would be required by proposed § 26.199(f)(2)(i), the collective work hours of security personnel would be limited to an average of not more than 60 hours per person per week during any plant outage or planned security system outage. If an increase in threat condition occurs during such a period, and the increased threat condition persists for a period of 8 weeks or fewer, proposed § 26.199(f)(iv) would establish an exception for the collective work hour controls on security personnel for the duration of the increased threat condition. However, if during any such outage, the threat condition returned to the least significant threat condition that was in effect at any time within the past 8 weeks, then the licensee would be required to limit the collective work hours of security personnel to an average of 60 hours per person per week for the first 8 weeks of the outage for the periods that occurred before and after the increased threat condition. For example, if, during an 8-week outage, the threat level increased at the beginning of week 3 and returned to the original or a lower threat level at the conclusion of week 4, then the licensee would be required to limit the collective work hours of security personnel to a group average of no more than 60 hours per person per week during weeks 1–2 and 5–8 of the outage. Outage weeks 3–4 would not be subject to the proposed work hour controls because of the increased threat condition. As such, proposed § 26.199(f)(2)(iv) would clarify the limits to be applied when multiple plant conditions occur at the same time. Consistent with the requirements of proposed § 26.199(f)(2)(i), licensees would be required to limit the collective work hours of security personnel to an average of 48 hours per person per week following the first 8 weeks of the outage.

This proposed exception to the collective work hour controls would be necessary to ensure that licensees have the flexibility to take any immediate actions necessary for maintaining plant security. The proposed exception would be limited in duration to ensure that licensees take appropriate long-term actions to prevent cumulative fatigue should the increased threat condition be sustained for a period that is longer than 8 weeks.

Proposed § 26.199(f)(2)(v) would be added to further clarify the applicability of the collective work hour limits for security personnel during multiple consecutive and concurrent plant conditions. Licensees would be permitted to relax collective work hour controls in situations in which additional increases in threat condition occur during an unplanned security system outage or increased threat condition, but only for a period that is the shorter of either the duration of the increased threat condition or 8 weeks. The proposed exception would codify, in part, an exception to collective work hour controls that is permitted by Order EA–03–038. The proposed exception to the collective work hour controls would be necessary to ensure that licensees have the flexibility to take any immediate actions necessary for maintaining plant security in response to increasing security threat levels. The proposed exception would be limited in duration to ensure that licensees take appropriate long-term actions to prevent cumulative fatigue should an increased threat condition be sustained for a period of more than 8 weeks.

Proposed § 26.199(f)(2)(vi) would be added to establish requirements controlling the exception period from the collective work hour controls when a threat condition decreases during an unplanned security system outage or increased threat condition. In these circumstances, the proposed rule would establish the beginning of the exception period based upon the date upon which the current threat condition was last entered as a result of a threat condition increase. For example, if the threat level increases at the beginning of week 1, increases again at the beginning of week 3, and then decreases in week 5, the beginning of the maximum 8-week exception period would be the beginning of week 1. The proposed requirement would ensure that the duration of the exception period is no longer than necessary based upon the current threat level, thereby providing licensees with the flexibility to respond to increased threat conditions while minimizing the potential for cumulative fatigue of security personnel. Proposed § 26.199(f)(2)(vi) would codify, in part, an exception to the work hour controls that is permitted by Order EA–03–038.

Proposed § 26.199(f)(3) would be added to permit the collective work hours of any job duty group specified in proposed § 26.199(a) to exceed an average of 48 hours per week in one averaging period if all of the conditions specified in proposed § 26.199(f)(3)(i)–(f)(3)(iii) are met. The collective work hour controls of proposed § 26.199(f) would address the long-term control of work hours, including the limited use of overtime for occasional, short-term, exigent circumstances. The primary objective of proposed § 26.199(f) would be to ensure that fatigue resulting from the routine work hours of individuals performing the functions listed in proposed § 26.199(a)(1)–(a)(5) would not adversely affect their abilities to safely and competently perform their duties, and therefore that licensees maintain adequate shift coverage without routine heavy use of overtime. The objective of proposed § 26.199(f)(3) would be to establish a regulatory framework that would accommodate circumstances beyond the reasonable control of licensees, while ensuring that licensees continue to provide reasonable assurance that the effects of fatigue and degraded alertness on individuals' abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety. The criteria in proposed § 26.199(f)(3)(i)–(f)(3)(iii) would permit licensees to control work hours to a higher collective work hour limit under certain occasional, short-term, exigent circumstances.

Proposed § 26.199(f)(3)(i) would be added to establish the first criterion for permitting a higher collective work hour limit by requiring that the circumstances that cause collective work hours to exceed 48 hours per person per week cannot be reasonably controlled. Unusual circumstances (*e.g.*, strikes, hurricanes, outage extensions for reasons that licensees cannot reasonably control, extremely high employee turnover) may require increased work hours for a short period of time, and licensees cannot practically maintain staffing reserves to avoid using overtime in such unusual circumstances. These unusual circumstances would place licensees in jeopardy of violating the requirements of proposed § 26.199(f). However, temporarily exceeding the proposed collective work hour limits in circumstances that could not be reasonably controlled by a licensee generally would not indicate that the licensee's fatigue management program was ineffective.

Proposed § 26.199(f)(3)(ii) would be added to establish the second criterion for permitting a higher collective work hour limit in unusual circumstances that could not be reasonably controlled. The proposed rule would prohibit collective work hours from exceeding 54

hours per person per week in these circumstances. This proposed limit would be necessary to ensure that workers do not become unacceptably fatigued during the exigent circumstances. In some instances, licensees may rely on this provision to permit a 54-hour per person per week collective work hour limit during the averaging period following an 8-week outage that was extended for reasons beyond the licensee's reasonable control (*e.g.*, defects in new equipment that were only detectable following installation, late delivery of key equipment or parts). Limiting collective work hours to 54 hours per person per week would provide a substantial increase in the hours that would be available to address the emergent circumstance(s) [equivalent to approximately one month of work at the maximum hours permitted by the individual work hour controls of proposed §§ 26.199(d)(1) and (d)(2)] while continuing to ensure the availability of some recovery days.

Proposed § 26.199(f)(3)(iii) would be added to establish the third criterion for permitting a higher collective work hour limit. The proposed rule would require that the additional work hours that result in the group average exceeding 48 hours per person per week would be worked only to address the circumstances that the licensee could not have reasonably controlled. This proposed provision would require licensees to use relief from the 48-hour collective work hour limit only to the extent necessary, and not as an opportunity to increase work hours for unrelated activities performed by the group. For example, the proposed provision would permit a maintenance job duty group's collective work hours to average 50 hours per person per week in one averaging period if a crew of maintenance technicians worked excess hours in order to exit an LCO on time. However, the proposed provision would not permit the licensee to assign unrelated work activities to other maintenance technicians, and thereby increase the group's collective work hours to the 54 hours per person per week that the proposed rule would permit in the specified circumstances.

Proposed § 26.199(f)(4) would be added to prohibit licensees from repeatedly permitting the collective work hours of any job duty group to exceed an average of 48 hours per person per week. As discussed with respect to proposed § 26.199(f)(3), the NRC recognizes that, because of circumstances that a licensee cannot reasonably control, there may be averaging periods in which a job duty group's collective work hours exceed the 48-hour collective limit. However, the primary objective of the collective work hour limit would be to prevent cumulative fatigue that can result from sustained extended work hours. The repeated use of the accommodations afforded by proposed § 26.199(f)(3) to exceed the 48-hours per person per week collective work hour limit in proposed § 26.199(f) would be inconsistent with the objective of preventing cumulative fatigue. Both increased workload and decreased opportunity for rest can contribute to cumulative fatigue (Baker, *et al.*, 1994; Rosekind, 1997; Totterdell, *et al.*, 1995; Knauth and Hornberger, 2003; Rosa, 1995). With each passing week of an extended work schedule, individuals have worked an increasing number of their normally scheduled days off. Deferring daily living obligations becomes increasingly difficult, causing increased pressure to reduce sleep time in order to meet the demands of both work and daily life, thereby increasing the potential for cumulative fatigue. Therefore, it would be necessary to ensure that licensees do not permit any job duty group to exceed the collective work hour limits in the proposed rule repeatedly.

Proposed § 26.199(f)(4)(i) would be added to prohibit licensees from permitting the collective work hours of any job duty group to exceed the 48-hour limit in any two consecutive averaging periods. This proposed requirement would ensure that individuals in a job duty group who worked extended hours during one averaging period have recovery time during the subsequent averaging period, during which they would resume working normal work hours.

Proposed § 26.199(f)(4)(ii) would prohibit licensees from permitting the collective work hours of any job duty group to exceed the 48-hour limit in more than one averaging period during any 26-week period. This proposed requirement would be necessary because the proposed rule permits licensees to establish averaging periods of any length less than 14 weeks in proposed § 26.199(b)(2) [Collective work hours]. By manipulating the lengths of averaging periods, for example, a licensee could require a job duty group to work hours in excess of the 48-hour collective limit during one 13-week averaging period, reduce the group's collective work hours to 48 hours or fewer during a subsequent 1-week averaging period, and still be in compliance with proposed § 26.199(f)(4)(ii). This schedule manipulation could result in individuals working 48 weeks of extended work hours in a calendar year, punctuated only by four, 1-week periods of normal work hours, which would lead to extreme levels of cumulative fatigue. Therefore, in order to ensure that the 48-hour collective work hour limit achieves the objective of preventing cumulative fatigue, proposed § 26.199(f)(4)(ii) would require that any averaging periods in which a job duty group works extended hours during normal operations would be widely separated in time and occur no more frequently than twice in one rolling year.

Proposed § 26.199(f)(5) would be added to permit licensees to exceed any collective work hour limit of proposed § 26.199(f) if the licensee submits a written request to the NRC and obtains advance approval of a written request that includes the information in proposed § 26.199(f)(5)(i)–(f)(5)(iii). Proposed § 26.199(f)(5) would provide a regulatory framework for addressing unique and infrequent circumstances, such as steam generator replacements or other extended outages, that would be difficult to manage within the collective work hour controls of proposed § 26.199(f), but that licensees could effectively manage using comparable work scheduling controls and fatigue mitigation strategies. For example, an extended outage of longer than 8 weeks may have a high workload at the beginning and end of the outage, with limited use of extended hours in the intervening period. The potential for cumulative fatigue may be minimal in such circumstances. However, the use of extended work hours after the first 8 weeks of the outage would be subject to collective work hour controls and could challenge the ability of the licensee to limit collective work hour averages to no more than 48 hours per person per week in the subsequent averaging period. Proposed § 26.199(f)(5) would permit licensees to obtain approval for alternative approaches to work scheduling controls and fatigue mitigation strategies that the licensee could tailor to these unique and infrequent circumstances.

Proposed § 26.199(f)(5)(i) would be added to require that the written request to the NRC must include a description of the specific circumstances that would require the licensee to exceed the applicable collective work hour limit, the job duty group(s) affected, and the collective work hour limit(s) to be exceeded. The information regarding the specific circumstances would be necessary for the NRC to determine whether the circumstances warrant special consideration and whether the

fatigue mitigation strategies that the licensee would be required to establish in proposed § 26.199(f)(5)(iii) would be appropriate for those circumstances. The information on the job duty group(s) affected would be necessary for the NRC to determine whether the licensee's proposed fatigue mitigation strategies are appropriate for those job duty group(s) and also to ensure that NRC resident inspectors would be aware of which job duty group(s) would be working under the revised work hour controls, if approved. Information on the collective work hour limit(s) to be exceeded would be necessary for the NRC to evaluate whether the fatigue mitigation strategies would provide an effective alternative to the limit(s) to be exceeded.

Proposed § 26.199(f)(5)(ii) would be added to require the written request to include a statement of the period of time during which it would be necessary to exceed the collective work hour limit(s). This information would be necessary for the NRC to evaluate whether the fatigue mitigation strategies that the licensee would be required to establish in proposed § 26.199(f)(5)(iii) are appropriate for the time period requested.

Proposed § 26.199(f)(5)(iii) would be added to require the written request to include a description of the fatigue mitigation strategies, including, but not limited to, rest break requirements and work hour limits, that the licensee would implement to ensure that the individuals affected would be fit to safely and competently perform their duties. This information would be necessary for the NRC to evaluate whether these strategies would provide an effective alternative to the work hour limits to be exceeded.

Proposed § 26.199(g) [Successive plant outages] would be added to establish requirements for the control of work hours during plant outages that closely follow a preceding plant outage. At the conclusion of an outage, individuals are likely to be fatigued from working extended hours and the increased workload associated with the outage and plant restart preparations. The objective of the proposed requirement would be to provide adequate opportunity for individuals to recover and transition to an operating schedule, and thereby reduce the potential for cumulative fatigue of individuals that can result from outages that occur in close succession. The proposed requirement would apply to outages that follow the preceding outage by less than 2 weeks. A minimum of 2 weeks under normal workloads and the collective work hour requirements of proposed § 26.199(f), which are generally only applicable during non-outage periods, would be necessary to provide reasonable assurance that individuals have the opportunity for successive days of rest to reduce the potential for cumulative fatigue. For purposes of work hour control, the proposed provision would require licensees in effect, to treat outages that follow a preceding outage by less than 2 weeks as a continuation of the first outage. Specifically, licensees would be required to apply the requirements of proposed § 26.199(d)(2)(iii), (f)(1), (f)(2)(i), and (f)(2)(iv) based upon the number of days that have elapsed since the first plant outage in the series began. For example, if a refueling outage lasts 6 weeks, but the plant encounters difficulties during power ascension a day after exiting the refueling outage, and enters a new outage, then the 8-week exclusion period must be calculated from the beginning of the refueling outage.

Proposed § 26.199(h) [Common defense and security] would be added to relieve a licensee from the proposed collective work hour controls when written notification is received from the NRC for the purpose of assuring the common defense and security for a period defined by the NRC. This proposed paragraph would provide necessary relief from the requirements of this proposed section in cases of emergencies that are not otherwise covered in this section, including war, in which the increased risk from fatigue-induced errors would be outweighed by the need to maintain the common defense and security. The proposed provision would define the process by which the NRC would provide such relief.

Proposed § 26.199(i) [Plant emergencies] would be added to temporarily waive the requirements of proposed § 26.199(c)–(f) during declared emergencies, as defined in the licensee's emergency plan. Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of proposed § 26.199(c)–(f). The objective of the proposed temporary exemption would be to ensure that the control of work hours and management of worker fatigue do not impede a licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status. At the conclusion of the declared emergency, the proposed rule would require licensees to again comply with the work hour controls.

Proposed § 26.199(j) [Reviews] would be added to require licensees to periodically self-assess their performance with respect to controlling the work hours of those individuals who perform the job duties specified in proposed § 26.199(a). The work hour controls in proposed § 26.199(a) would provide licensees with substantial flexibility in controlling work hours. Accordingly, periodic self-assessments would be necessary to maintain reasonable assurance that the licensee is implementing the specific work hour control provisions of proposed § 26.199 consistent with the general performance objective in proposed § 26.23(e). In addition, it would be necessary for the self-assessments to be scheduled in a manner that would ensure timely corrective action, if necessary. Outages and increased threat conditions increase the risk of human error as a result of higher workload, the performance of more complex and infrequent tasks, and the pressure to meet schedular goals. Therefore, it would be particularly important to include those periods of time in any assessment of the effectiveness of a licensee's work hour controls.

Proposed § 26.199(j)(1) would be added to require licensees to focus their assessments on those individuals who were at the greatest risk of committing performance errors, including, but not limited to, those individuals listed in proposed § 26.199(j)(1)(i)–(j)(1)(iv). These individuals would have worked the most hours when compared with their peers during the same averaging period; have been granted the most work-hour waivers; and were subject to fatigue assessments under proposed § 26.201 (*i.e.*, were assessed for fatigue for cause, post-event, or in response to a self-declaration of being unfit for duty because of fatigue). Requiring licensees to consider individual performance, as indicated by operating events or other errors, for those individuals listed in proposed § 26.199(j)(1)(i)–(j)(1)(iii), would provide an indication of whether those individuals' abilities to safely and competently perform their duties had actually been compromised.

Proposed § 26.199(j)(1)(i) would be added to require the assessments to include individuals who were granted more than one waiver during the review period. The proposed provision would require licensees to assess the work hours and performance of these individuals to ensure that licensees evaluate whether the individuals' abilities to safely and competently perform their duties had actually been

compromised. The proposed requirement would be necessary to ensure that licensees' use of waivers did not result in degraded worker fitness-for-duty.

Proposed § 26.199(j)(1)(ii) would be added to require the assessments to include individuals who were assessed for fatigue in accordance with § 26.201 [Fatigue assessments] during the review period. The proposed paragraph would require licensees to evaluate whether these individuals' abilities to safely and competently perform their duties had actually been compromised. An individual who has been assessed for fatigue may be working above his or her tolerance for overtime, and it would be necessary for licensees to fully evaluate the individual's overall performance. The proposed requirement would be necessary to ensure that licensee fatigue assessments are consistent with worker performance and are providing an effective basis for licensee fatigue management decisions.

Proposed § 26.199(j)(1)(iii) would be added to require the assessments to include individuals who performed the job duties listed in proposed § 26.199(a) whose average individual work hours per week exceeded 54 hours during any averaging period for which the collective work hours limit would be 48 hours in this proposed section. These individuals worked significantly more hours than others in their job duty group. The proposed requirement would be necessary to ensure that licensees fully evaluate the work hours and performance of these individuals, who are at a much higher risk for cumulative fatigue than their peers. As noted with respect to proposed § 26.199(j)(1)(iii), several studies have indicated a tendency for individuals to underestimate their levels of fatigue (Wylie, *et al.*, 1996; Dinges, 1995; Rosekind and Schwartz, 1988). This tendency may cause an individual to fail to recognize that his or her ability to perform is degraded. The proposed rule would require licensees to independently evaluate the performance of these individuals to determine whether their abilities to safely and competently perform their duties had actually been compromised.

Proposed § 26.199(j)(1)(iv) would be added to require that the assessments must include security personnel whose average individual work hours per week exceeded 66 hours in any averaging periods for which the collective work hour limit in this proposed section would be 60 hours per person per week. The proposed rule would require licensees to evaluate the work hours and performance of these individuals for the same reasons discussed with respect to the individuals who would be evaluated under proposed § 26.199(j)(1)(iii).

Proposed § 26.199(j)(2) would be added to require licensees to review individuals' hours worked and the waivers under which work was performed to assess staffing adequacy for all of the jobs that are subject to the work hour controls of proposed § 26.199. The proposed collective work hour controls of § 26.199(f) would provide assurance that licensees are managing cumulative fatigue at a gross level for broad job duty groups, and an indication of whether staffing is adequate to support this objective. However, the use of broad job duty groups creates a potential that sub-groups of individuals (e.g., those with specialized skills) may work a disproportionate number of hours and, consequently, may be more susceptible to fatigue than otherwise indicated by the collective averages. Accordingly, proposed § 26.199(j)(2) would require licensees to review work hours and waivers of the work hour controls to provide assurance that cumulative fatigue is properly managed for all jobs.

Proposed § 26.199(j)(3) would be added to require licensees to document the methods used to conduct their reviews and the results of the reviews. The NRC would use the documentation during site inspections as a means of assuring compliance with the regulations. The methods and results of the reviews would be indicative of a licensee's performance in managing the fatigue of its workers who would be subject to the requirements of this proposed section. Irregularities in the review process may indicate a programmatic weakness that might trigger further inspection activities. The NRC considers the additional recordkeeping burden for documenting this information to be outweighed by the NRC's need to ensure that licensees are complying with the proposed requirements of this section and maintaining effective fatigue management programs.

Proposed § 26.199(j)(4) would be added to require licensees to record, trend, and correct, under the licensee's corrective action program, any problems identified in maintaining control of work hours consistent with the specific requirements and performance objectives of Part 26. Accordingly, licensees would be required to maintain the documentation that would be necessary for NRC reviews of licensees' compliance with the proposed work hour controls within the licensees' existing corrective action programs. The proposed requirement would be in keeping with the existing requirements in 10 CFR Part 50 Appendix B, Criterion XVII, ''Quality Assurance Records,'' and Criterion XVI, ''Corrective Action.'' The NRC would use the documentation during site inspections as a means of assuring compliance with the regulations. The corrective actions and trending would be indicative of a licensee's performance in managing the fatigue of its workers who would be subject to the requirements of this part. Irregularities in the corrective action process may indicate a programmatic weakness that might trigger further inspection activities. The NRC considers the additional recordkeeping burden for documenting this information under the existing corrective action program to be outweighed by the NRC's need to ensure that licensees are complying with the proposed requirements and maintaining effective fatigue management programs.

Section 26.201 Fatigue Assessments

A new § 26.201 [Fatigue Assessments] would be added to require licensees to conduct fatigue assessments under several conditions. These conditions, which would be specified in proposed § 26.201(a)(1)–(a)(4), would include for cause, after a self-declaration, after an event that would require post-event drug and alcohol testing, and as a followup to returning an individual to work after a self-declaration. The proposed assessments would be necessary to determine whether individuals who are observed to be in a condition creating a reasonable suspicion of impaired individual alertness or have indicated that they are not fit for duty because of fatigue can, in fact, safely and competently perform their duties. Further, in situations where there has been a plant event that would require drug or alcohol testing as specified in proposed § 26.31(c), this proposed section would require the licensee to conduct a fatigue assessment in order to determine whether fatigue contributed to the event.

Work hour controls are necessary, but not sufficient, to effectively manage worker fatigue. Worker fatigue, and its effects on worker alertness and performance, can result from many causes in addition to work hours (e.g., stress, sleep disorders, daily living obligations) (Rosa, 1995; Presser, 2000). Further, there are substantial individual differences in the ability to work for extended periods without performance degradation from fatigue (Gander, 1998; Jansen, et al., 2003; Van Dongen, et al., 2004a; Van Dongen, et al., 2004b). The work hours controls of proposed § 26.199 would provide only partial assurance that individuals are not

fatigued. Therefore, fatigue assessments would be essential.

Appropriately assessing fatigue is also important because workers who are experiencing either acute or cumulative fatigue may not be able to perform their duties safely and competently, as discussed in Section IV. D. There is a large body of research that demonstrates the negative effects of fatigue on individuals' abilities to perform. The literature includes studies comparing the effects of fatigue with those of alcohol intoxication. The effects of both conditions can be expressed in the form of performance decrements. Studies have correlated hours of wakefulness with equivalent blood alcohol concentrations showing that the performance decrements resulting from fatigue are at least as severe as the performance decrements observed when individuals consume the legal limit of alcohol (Dawson and Reid, 1997; Falleti, et al., 2003). At the extreme, workers who have acute fatigue show symptoms that are similar to those of intoxication. Speech is less precise, attention may be lacking, and normal body movements and posture may be absent. Therefore, it is just as important for a worker to be assessed to determine if he or she is unduly impaired from fatigue as it is for the worker to be evaluated to determine whether he or she is impaired from consuming alcohol.

The objective of the assessments required by proposed § 26.201(a)(1)–(a)(4) would be for licensees to appropriately address instances of worker fatigue, including those that are not prevented by the work hour controls, regardless of the number of hours that the subject individual has worked or rested. As discussed with respect to proposed § 26.201(c), these assessments would provide the basis for subsequent management actions for fatigue management (e.g., relieving an individual of duties or requiring additional fatigue mitigation actions). Therefore, fatigue assessments are important for effective fatigue management because they provide the basis for any short-term corrective actions that may be necessary to ensure that individuals are able to safely and competently perform their duties, and any long-term corrective actions that may be necessary to address individual or programmatic issues contributing to recurring instances of fatigue.

Proposed § 26.201(a)(1) would specify that licensees must perform a fatigue assessment, in addition to any other testing that would be required under proposed §§ 26.31(c) and 26.77, if a worker is observed to be in a condition of impaired alertness and there is a reasonable suspicion that he or she may not be fit to safely and competently perform his or her duties. The objective of the proposed requirement would be to ensure that fatigue is considered, in addition to drugs or alcohol, as a cause for impaired alertness. As noted in SECY–01–0113, approximately 80 percent of all for-cause FFD tests conducted annually yield negative results for drugs and alcohol. A fatigue assessment would help to determine if fatigue was the cause for the perceived impairment in circumstances where testing does not support drugs or alcohol as the probable cause.

Common indications of impaired alertness include yawning, red eyes, prolonged or excessive blinking, rubbing of the face with the hands, and gross body movements to maintain alertness. Individuals may take substantially longer to complete routine tasks, exhibit difficultly processing written or oral communications, and may become less talkative. At the extreme, workers who are experiencing acute fatigue have symptoms that are similar to those of intoxication, as discussed with respect to proposed § 26.201. Individuals who are fatigued are more likely to complain of illness, pain, or discomfort. In addition to decreased vigor, fatigued individuals may be more irritable, engage in inappropriate humor, exhibit less conservative decision-making, and persevere in using ineffective problem solutions (Horne, 1988; Harrison and Horne, 2000; Dinges, et al. 1997; Pilcher and Huffcutt, 1996; Belenky, et al. 2003; Monk, 2003).

Proposed § 26.201(a)(1) would not require licensees to conduct a fatigue assessment if indications of impaired individual alertness are observed during an individual's break period. The NRC considered a comment from the IBEW at a September 14, 2004, public meeting expressing concern with for-cause assessments for work performed outside of the PA. Although whether a worker is inside the PA is not a criterion for being subject to Part 26 requirements, the NRC recognizes that napping is an effective means for reducing worker fatigue. Therefore, proposed § 26.201(a)(1) would exclude napping during a break period as a condition for which the proposed provision would require a for-cause fatigue assessment.

Proposed § 26.201(a)(1) would also permit licensees to conduct a fatigue assessment, without drug and alcohol testing, if the observed condition is impaired alertness, with no other indication of possible substance abuse. In developing the proposed requirement for for-cause fatigue assessments, the NRC considered stakeholder comments during the public meetings described in Section V. Stakeholders expressed concern that testing for drugs and alcohol, in addition to fatigue, when the only apparent cause of impairment was decreased alertness, would cause stigma, burden, and reluctance to raise FFD concerns that may result in for-cause testing. Accordingly, the proposed requirement would permit licensees to assess only fatigue, if there are no indications of possible substance abuse.

Proposed § 26.201(a)(1) would also permit licensees to conduct drug and alcohol testing, without a fatigue assessment, when the licensee has reason to believe that the observed condition is not due to fatigue. The NRC considered stakeholder comments at the public meetings described in Section V that a requirement to perform a fatigue assessment when the licensee has a reasonable basis for believing that the condition is from causes other than fatigue would be an undue burden. In many cases, an observed condition may clearly relate to drugs or alcohol only (such as the smell of alcohol on an individual), and in such cases there would be no benefit from requiring a fatigue assessment.

Proposed § 26.201(a)(2) would be added to require licensees to conduct a fatigue assessment if an individual makes a self-declaration that he or she may not be fit to safely and competently perform his or her duties because of fatigue, except if the licensee permits or requires the individual to take a rest break of at least 10 hours. Self-declarations provide assurance that instances of worker fatigue, including those that are not prevented by the work hour controls in proposed § 26.199, are appropriately addressed, regardless of the number of hours the individual has worked or rested. Current § 26.27(b)(1) requires that ''impaired workers, or those whose fitness may be questionable, shall be removed from activities within the scope of this part, and may be returned only after determined to be fit to safely and competently perform activities within the scope of this part.'' A statement by an individual to his or her supervisor that he or she may not be fit to safely and competently perform his or her duties because of fatigue is an indication that the individual's FFD is questionable, and that an assessment, or a rest break of at least 10 hours, would be necessary before the individual may be returned to duty. Therefore, in circumstances in which an individual requests to be relieved of duties because of fatigue and the individual is relieved of duties for at least 10 hours, the

proposed rule would not require the licensee to conduct another fatigue assessment before permitting the individual to return to duty, consistent with current industry practice. Providing a 10-hour break would be consistent with proposed § 26.199(b)(2)(i), which would establish required break times between work periods, and is generally considered sufficient to address most acute fatigue conditions.

As discussed with respect to proposed § 26.201(c), a fatigue assessment would provide a basis for a licensee to determine whether the individual is able to safely and competently perform his or her duties and what, if any, subsequent management actions for fatigue management are necessary (e.g., relieving an individual of duties or requiring additional fatigue mitigation actions). As discussed with respect to proposed § 6.197(b)(1)(ii), licensees would be required to establish controls and conditions under which an individual may be permitted or required to perform work after that individual declares that he or she is not fit because of fatigue.

In developing the proposed requirement for fatigue assessments of individuals who have self-declared, the NRC considered research concerning subjective assessments of alertness. Self-declarations would generally be based on an individual's subjective evaluation of his or her alertness. Studies have indicated that individuals often misjudge their own fatigue, typically by underestimating their level of fatigue and propensity for uncontrolled sleep episodes. This effect is widely recognized by scientists who study sleep and fatigue. Rosekind, et al. (1997) noted that ''An important phenomenon, highly relevant to operational environments, is that there is a discrepancy between subjective reports of sleepiness/alertness and physiological measures. In general, individuals will report higher levels of alertness than indicated by physiological measures.'' As a consequence, individuals who self-declare would tend to be more impaired than they realize. An exception to this tendency has been noted by Dinges, et al. (1988), who noted that naps can benefit the performance of those experiencing sleep loss, without that benefit being apparent in subjective measures. Therefore, it is not only important to assess self-declarations as an indicator that an individual may not be able to safely and competently perform his or her duties, but also to consider factors in addition to a self-declaration as part of the fatigue assessment.

Proposed § 26.201(a)(2) would also specify that licensees must perform fatigue assessments for self-declarations made to an individual's supervisor. The NRC considered stakeholder comments at public meetings that the proposed requirement should be clear with respect to the behavior that constitutes a self-declaration. For example, stakeholders expressed concern that an individual's off-hand remark to a co-worker that he or she is groggy would be considered a self-declaration under the proposed rule and, therefore, require a fatigue assessment in conditions that could be satisfactorily addressed through less formal processes. The NRC's objective is not to supplant these normal processes for licensee workforce management, but to ensure that formal declarations of fatigue are appropriately evaluated and addressed. Therefore, the proposed requirement would specify that fatigue assessments must be conducted for self-declarations concerning an individual's ability to ''safely and competently perform his or her duties'' and require that the self-declaration must be made to the individual's supervisor. However, as discussed with respect to proposed § 26.201(a)(1), a fatigue assessment must be performed in response to an observed condition of impaired alertness. If, in the preceding example, the ''groggy'' individual remains on duty and is observed to exhibit impaired alertness, a fatigue assessment would be required ''for-cause'' in accordance with proposed § 26.201(a)(1).

Proposed § 26.201(a)(3) would be added to specify that licensees must perform a fatigue assessment after an event that would require drug or alcohol testing, as required in proposed § 26.31(c)(3). Proposed § 26.31(c)(3)(i)–(c)(3)(iii) would specify the events and conditions requiring post-event drug and alcohol testing. A fatigue assessment would also be necessary in these circumstances to determine whether worker fatigue contributed to the event and, if so, to identify the need for any corrective actions to prevent similar future events. The assessment would also provide the basis for subsequent management actions for fatigue management, as required by proposed § 26.201(c) (e.g., relieving an individual of duties or requiring additional fatigue mitigation actions). Further, the fatigue assessment may provide insights concerning the effectiveness of the licensee's fatigue management program.

Consistent with proposed § 26.31(d)(5)(ii), the proposed requirement would specify that licensees may not delay necessary medical treatment in order to conduct a fatigue assessment, if the event involved physical harm to the individual. The NRC considers the immediate medical needs of the individual to be paramount. In these circumstances, it is reasonable to presume that the individual has been removed from duty and consequently the individual's level of fatigue would be irrelevant to the immediate protection of public health and safety or the common defense and security.

Proposed § 26.201(a)(4) would be added to require licensees to perform a followup fatigue assessment if an individual is to be returned to work after a break of fewer than 10 hours following a fatigue assessment that was performed for cause or in response to a self-declaration. Although sleep periods of less than 8 hours (e.g., naps) can mitigate some effects of fatigue, such sleep periods are typically insufficient to provide complete recovery from fatigue (McCallum, et al., 2003; Dinges, et al 1997; Totterdell, et al., 1995). As a consequence, the objective of this proposed provision would be to ensure that, in circumstances of sleep periods of less than 8 hours (e.g., if a licensee provides an individual an opportunity for a nap rather than a 10-hour break), the short rest break has provided sufficient rest to mitigate the individual's fatigue, and that the individual is not still groggy from sleep inertia. Sleep inertia is the grogginess that an individual experiences in the transition from sleep to wakefulness that can temporarily affect an individual's ability to safely and competently perform his or her duties (Bruck and Pisani, 1999; Sallinen, et al., 1998). Further, the assessment would ensure that the individual is capable of performing his or her duties safely and competently during the upcoming work period. It would also provide the information necessary for the licensee to determine whether any controls or conditions must be implemented during the work period (Priest, 2000; Baker, et al., 1990; Sallinen, 1998; Kruger, 2002).

Proposed § 26.201(b) would be added to require that either a supervisor or a staff member of the FFD program, who is trained in accordance with the requirements of proposed §§ 26.29 and 26.197(c), must conduct any fatigue assessment that would be required under proposed § 26.201. In accordance with proposed § 26.201(c), fatigue assessments would provide the basis for subsequent actions for fatigue management (e.g., relieving an individual of duties or requiring

additional fatigue mitigation actions). In addition, the NRC recognizes that fatigue assessments may be used by some licensees as a basis for imposing sanctions on individuals. Therefore, the authority to perform fatigue assessments should be limited to supervisors or staff members of the FFD program. The training required by §§ 26.29 and 26.197(c) would provide the knowledge and abilities that are essential to a supervisor's or FFD program staff member's ability to make valid assessments in this regard. Among other FFD topics, the proposed training would address: (1) The contributors to worker fatigue and decreased alertness in the workplace; (2) symptoms of worker fatigue; (3) indications and risk factors for common sleep disorders; and (4) the effective use of fatigue countermeasures. Individuals would also be required by proposed § 26.29(b) to demonstrate successful completion of the training by passing a comprehensive examination that addresses the KAs.

Proposed § 26.201(b) would further require that supervisors or FFD program staff members must perform the fatigue assessment face to face with the subject individual. This proposed requirement would ensure that the individual performing the assessment has the opportunity to (1) observe the subject individual's appearance and behavior to note indications of fatigue (e.g., decreased facial tone, rubbing of eyes, slowed speech); (2) interact with the individual to understand the individual's self-assessment of his or her ability to safely and competently perform his or her duties; and (3) understand any factors in addition to the individual's work schedule that may have contributed to fatigue.

Proposed § 26.201(b)(1) would be added to prohibit individuals who observe another individual who is exhibiting indications of impaired alertness from performing the for-cause fatigue assessment of that individual. Without this proposed prohibition, a single supervisor could potentially both observe a worker exhibiting indications of impairment from fatigue and also conduct the for-cause assessment of that worker. In accordance with proposed § 26.201(c), fatigue assessments would provide the basis for subsequent management actions for fatigue management. In addition, some licensees may use fatigue assessments as a basis for imposing sanctions on individuals, if, for example, a licensee believes that an individual has been negligent in maintaining his or her FFD. Therefore, in the case of fatigue assessments that would be conducted for cause, the fatigue assessment should be performed by an independent third party to provide reasonable assurance of an objective assessment.

Proposed § 26.201(b)(2) would be added to prohibit individuals from performing a post-event fatigue assessment in those circumstances specified in proposed § 26.201(b)(2)(i)–(b)(2)(iii), in which a conflict of interest may be present. An individual who has a conflict of interest may not provide an objective assessment of the subject individual's fatigue. The proposed requirement would provide assurance of an objective fatigue assessment by prohibiting individuals from performing the assessment who were directly responsible for performing the work or assessing the individuals who were involved in the event.

Proposed § 26.201(b)(2)(i) would be added to prohibit individuals from performing a post-event fatigue assessment if they performed or directed the work activities during which the event occurred. A supervisor who performed some of the work activities during which the event occurred may benefit from either positive or negative results from a fatigue assessment of another individual, depending on the circumstances. Similarly, a supervisor who directed the work activities of an individual may avoid an adverse action against himself or herself for the actions of a fatigued individual under his or her supervision if the supervisor erroneously assessed the individual as not fatigued. Therefore, the proposed rule would prohibit these individuals from performing fatigue assessments under the specified conditions.

Proposed § 26.201(b)(2)(ii) would be added to prohibit individuals from performing a post-event fatigue assessment if they performed, within 24 hours before the event occurred, a fatigue assessment of the individuals who were performing or directing the work activities during which the event occurred. These individuals may have a conflict of interest. For example, if an individual had previously self-declared fatigue, but a fatigue assessment determined he or she was fit to continue work, and an event subsequently occurred that would require the subject individual to be assessed again, then the supervisor who performed the first assessment may avoid adverse action for their previous determination by performing the post-event fatigue assessment and erroneously determining the individual was not fatigued. Therefore, the proposed rule would prohibit these individuals from performing fatigue assessments under the specified conditions.

Proposed § 26.201(b)(2)(iii) would be added to prohibit individuals from performing a post-event fatigue assessment if they evaluated or approved a waiver of the limits specified in proposed § 26.199(d)(1) and (d)(2) for any of the individuals who were performing or directing the work activities during which the event occurred, if the event occurred while such individuals were performing work under that waiver. For example, a supervisor who previously assessed an individual such that the individual would be permitted to perform work under a waiver would benefit from an assessment that the individual was not fatigued if an event occurred while the individual was working under the waiver. Therefore, the proposed rule would prohibit these individuals from performing fatigue assessments under the specified conditions.

Proposed § 26.201(c) would be added to require that fatigue assessments must provide the information necessary for management decisions and actions in response to the circumstance that initiated the assessment. This information would be necessary to determine the subject individual's ability to safely and competently perform his or her duties, as well as any controls or conditions that must be implemented. Proposed § 26.201(c) would provide assurance that fatigue assessments include sufficient and appropriate information to support a valid assessment of the individual relative to fatigue and therefore an appropriate basis for management decisions and actions. The criteria listed in proposed § 26.201(c)(1)(i)–(c)(1)(iii) would specify the minimum considerations for fatigue assessments.

In determining the scope of the proposed assessments, the NRC considered the need for licensees to be able to focus the assessment on information that would be readily available and verifiable. Proposed § 26.201(c) would require the assessment to address the three work schedule factors that are generally considered to be the largest determinants of worker fatigue (Akerstedt, 2003, 2004; McCallum, *et al.*, 2003; Mallis, *et al.*, 2002; Folkard and Monk, 1980; Rosa, 1995; Rosa, *et al.*, 1996), as follows:

Proposed § 26.201(c)(1)(i) would be added to specify the first criterion that fatigue assessments would address, which is acute fatigue. Acute fatigue directly affects an individual's ability to safely and competently perform his or her duties, as discussed in Section IV. D. Licensees could assess the potential for acute fatigue by estimating, at a

minimum, the total number of continuous hours the individual has been awake, as well as considering other individual factors or information provided by the individual (such as his or her ability to obtain rest during break periods).

Proposed § 26.201(c)(1)(ii) would be added to specify the second criterion that fatigue assessments would address, which is cumulative fatigue. Cumulative fatigue also directly affects an individual's ability to safely and competently perform his or her duties, as discussed in Section IV. D. Licensees could assess the potential for cumulative fatigue by reviewing, at a minimum: (1) The individual's work schedule during the past 14 days to assess whether the individual had adequate opportunity to obtain sufficient rest, considering the length and sequencing of break periods; (2) whether the available sleep periods occurred during the night or at other times when sleep quality may be degraded; (3) the potential for transitions between shifts (*e.g.*, from days to nights) to have interfered with the ability of the individual to obtain adequate rest; as well as (4) other individual factors or information provided by the individual (such as any personal issues that impact his or her ability to obtain adequate sleep). For cumulative fatigue, the sleep medicine scientific establishment uses the concept of a ''sleep debt,'' which is analogous to a bank account becoming overdrawn, and is a measure of how much an individual's sleep is being cumulatively reduced from his or her everyday sleep need. Many individuals build up a slight sleep debt during the working week, dissipating it by ''catch-up'' sleep on weekends (National Sleep Foundation, 2000; Monk, *et al.*, 2001). Therefore, in evaluating cumulative fatigue, how much of a ''sleep debt'' the worker had accrued in the preceding week needs to be evaluated. Dinges and colleagues (1997) noted a five-to seven-fold increase in the percentage of subjects noting a significant ''illness, infection, pain, discomfort, worry or problem'' in their daily logs as they progressed from baseline through the seven nights of restricted sleep. In addition to the expected decrements in vigor over the restricted sleep days, subjects' ratings indicated increases in confusion-bewilderment, tension-anxiety, and total mood disturbance.

Symptoms of cumulative fatigue are in some ways similar to those of acute fatigue, but in other ways quite different. The term, ''burnout,'' has been used to describe workers experiencing cumulative fatigue. Similar to burnout from other sources, burnout from cumulative fatigue is often characterized by a lack of initiative and/or creativity, with the individual just ''going through the motions like a zombie'' without being actively engaged or involved in the job he or she is being asked to perform. Harrison and Horne (2000) advanced the view that the more creative thought processes are those most likely to be impaired by the individual receiving insufficient amounts of the ''core'' sleep needed for cognitive restitution. They note ''[sleep deprivation] presents particular difficulties for decision-making involving the unexpected, innovation, revising plans, competing distraction and effective communication.''

Proposed § 26.201(c)(1)(iii) would be added to specify the third criterion that fatigue assessments would be required to address, which is circadian variations in alertness and performance. The impact of such variations on an individual's ability to safely and competently perform his or her duties is discussed in Section IV. D. Licensees could assess the potential for circadian degradations in alertness and performance by considering the time of day or night during which the work was or would be performed and whether the time period coincides with a circadian trough in the individual's level of alertness.

Proposed § 26.201(c)(2) would be added to require that individuals must provide complete and accurate information that may be required by the licensee to address the factors listed in proposed § 26.20(c)(1) (*i.e.*, acute fatigue, cumulative fatigue, and circadian variations in alertness and performance). Although work hours are an important determinant of worker fatigue, there are many other factors that can affect worker fatigue, not all of which may be readily apparent to a licensee. As a consequence, effective assessment and management of fatigue is a shared responsibility of individuals and licensees, and depends upon complete and accurate communication between the individual and the licensee concerning matters that may influence an individual's level of fatigue. For example, licensees may be able to estimate the total number of continuous hours that an individual has been awake through review of the individual's work schedule and assumptions regarding typical waking times for individuals on that schedule. However, individuals can provide information to better approximate the number of hours they have been continuously awake and facilitate a more accurate assessment of acute fatigue. Additionally, individuals may be able to provide information about their general level of work and non-work-related activities, and opportunities for rest during the period addressed in the fatigue assessment.

Licensees can practically assess the potential for cumulative fatigue by reviewing the individual's work schedule during the past 14 days to identify schedule features that typically influence whether an individual has had adequate opportunity to obtain sufficient rest. However, there are substantial individual differences in the ability to adapt to various schedules (Monk and Folkard, 1985). Therefore, individuals can provide general information related to the quality and quantity of sleep that they actually obtained during this period, which would substantively improve the licensee's assessment of the potential for cumulative fatigue.

Licensees can practically assess the potential for circadian degradations in alertness and performance by considering the time of day or night during which the work has been or would be performed and whether the time period would coincide with a circadian trough in alertness for the individual. However, individuals differ in the extent and rate at which they adapt to work during periods in which they would otherwise be asleep (Folkard and Tucker, 2003; Carrier and Monk, 2000) and can provide information (e.g., the timing of their sleep periods) that can better inform a licensee's assessment of the potential for circadian degradations in alertness.

Proposed § 26.201(c)(2) would also limit licensees' inquiries to obtaining from the subject individual only the information that is necessary to assess the factors listed in proposed § 26.201(c)(1). The fatigue assessment should provide a valid basis for licensee decisions and actions for fatigue management without undue invasion of an individual's privacy. For example, inquiries limited to the amount, quality, and timing of sleep, and general activity level of the individual can support an accurate fatigue assessment without the need for an individual to divulge personal details about the reasons for missed sleep or abnormal timings for sleep. Consistent with proposed § 26.37 [Protection of information], licensees would be required to keep any information from the individual's self-disclosures confidential.

Proposed § 26.201(d) would be added to prohibit licensees from concluding that fatigue had not or will not degrade the individual's ability to safely and competently perform his or her duties solely on the basis that the individual's

work hours have not exceeded any of the limits specified in proposed § 26.199(d)(1) or that the individual has had the minimum rest breaks required in proposed § 26.199(d)(2). The individual work hour controls of proposed § 26.199(d)(1) and (d)(2) would be intended to provide reasonable measures to prevent fatigue due to excessive work hours. However, the proposed controls address only work hours and the length of rest breaks, and as a consequence, compliance with these controls may not prevent an individual from experiencing fatigue from one or more of the many other factors that can cause fatigue, some of which may not be readily apparent to an employer. Workload and the type of work an individual performs, home stresses, sleep disorders, and differences in an individual's ability to work extended hours or adapt to certain schedules can all substantively affect worker fatigue (Rosa, 1995; Totterdell, et al., 1995; Knauth and Hornberger, 2003). Although the NRC considered the findings from studies of work hours and worker fatigue in developing the proposed maximum work hours and minimum rest requirements of proposed § 26.199(d)(1) and (d)(2), it is neither practical nor possible to establish limits that would prevent fatigue for all individuals. Therefore, the proposed rule would require licensees to consider factors in addition to work hours and rest breaks when determining whether an individual is fit to safely and competently perform duties.

Proposed § 26.201(e) would be added to require that, following a fatigue assessment, the licensee must decide whether the individual may perform job duties without a rest break, and, if so, whether controls and conditions must be established under which the individual may perform those duties. Controls and conditions may be necessary to ensure that the duties are performed in a safe and competent manner. Examples of controls and conditions would include, but would not be limited to: (1) A rest break; (2) peer review and approval of assigned job tasks; (2) assignment of job tasks that are non-repetitive in nature; (3) assignment of job tasks that are simple in nature; and (4) assignment to job duties that are not important to the protection of public health and safety or common defense and security. Proposed § 26.201(e) would also require licensees to ensure that any controls and conditions that have been determined to be necessary to return an individual to duty would be implemented.

Proposed § 26.201(f) would be added to require that licensees must document the results of any fatigue assessments that are performed, the circumstances that necessitated the fatigue assessments, and any controls and conditions that were implemented. The proposed documentation would be necessary for NRC inspectors to evaluate the fatigue assessment component of licensees' FFD programs and for the licensee to conduct the reviews required under proposed § 26.199(j) [Reviews]. The information that the proposed rule would require licensees to document would provide indicators of how well a licensee's fatigue mitigation program at a site is performing.

Subpart J—Recordkeeping and Reporting Requirements

Section 26.211 General Provisions

Proposed § 26.211 [General provisions] would be added to define general requirements related to recordkeeping and reporting under Part 26.

Proposed § 26.211(a) would establish a requirement that licensees and other entities who are subject to this part must maintain records and submit certain reports to the NRC, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule. In addition, the proposed paragraph would require that licensees and other entities retain the records required under the proposed rule for either the periods that are specified in proposed Subpart J or for the life of the facility's license, certificate, or other regulatory approval, if no records retention requirement is specified. This general records retention requirement is a standard administrative provision that is used in all other parts of 10 CFR that contain substantive requirements applicable to licensees and applicants, such as 10 CFR 50.71(c), and would be added for clarity in the language of the rule.

Proposed § 26.211(b) would be added to permit records to be stored and archived electronically if the method used to create the electronic records: (1) Provides an accurate representation of the original records; (2) prevents the alteration of any archived information and/or data once it has been committed to storage; and (3) allows easy retrieval and re-creation of the original records. The proposed paragraph would be added to recognize that most records are now stored electronically and must be protected to ensure the integrity of the data. The proposed requirements would be consistent with related requirements in the access authorization orders issued to nuclear power plant licensees dated January 7, 2003, and would, therefore, meet Goal 4 of this rulemaking, which is to improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003.

Section 26.213 Recordkeeping Requirements for Licensees and Other Entities

Proposed § 26.213 [Recordkeeping requirements for licensees and other entities] would amend current § 26.71 [Recordkeeping requirements]. Current § 26.71(d), which establishes requirements for FFD program performance reports, would be retained in a separate section that would focus only on those reports in proposed § 26.217 [Fitness-for-duty program performance data]. Proposed § 26.213 would retain but amend current § 26.71(a)–(c) and add other requirements that are interspersed throughout the current rule. These proposed changes would be made to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, by grouping recordkeeping requirements that apply to licensees and other entities in one section.

Proposed § 26.213(a) would require licensees and other entities to retain certain records related to authorization decision-making for at least 5 years after an individual's authorization has been terminated or denied, or until the completion of all related legal proceedings, whichever is later. The proposed requirement to retain records until the completion of all related legal proceedings would be added at the suggestion of stakeholders during the public meetings discussed in Section V. The stakeholders noted that some legal proceedings involving records of the type specified in the proposed paragraph have continued longer than the 5 years that the current rule requires these records to be retained and that adding a requirement to retain the records until all legal proceedings are complete would protect individuals' right to due process under the rule. The proposed change would be consistent with Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Proposed § 26.213(a)(1) would amend current § 26.71(a), which requires licensees to retain records of the inquiries that licensees conduct in granting unescorted access to an individual for 5 years following the termination of such access authorizations. The proposed paragraph

would update the terminology used in the current paragraph for consistency with the revised language used throughout the proposed rule. For example, the proposed paragraph would refer to ''self-disclosures,'' ''employment histories,'' ''suitable inquiries,'' and ''granting authorization,'' but retain the intent of the current paragraph. The proposed changes in terminology would be made for the reasons discussed with respect to proposed §§ 26.61 [Self-disclosure and employment history] and 26.63 [Suitable inquiry]. In addition, the current cross-reference to § 26.27(a) would be updated to cross-reference the related portions of the proposed rule.

Proposed § 26.213(a)(2) would amend current § 26.71(b), which requires licensees to retain records that are related to confirmed positive test results that have been confirmed by the MRO. The proposed paragraph would revise the current requirement by requiring licensees and other entities to retain records that are related to any violation of the FFD policy, which would include confirmed positive drug and alcohol test results. This proposed change would be made to ensure that licensees and other entities who may be considering granting authorization to an individual who has previously violated any aspect of an FFD policy can obtain these records for review as part of the authorization decision-making process specified in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information].

Proposed § 26.213(a)(3) would be added to require licensees and other entities to retain records that are related to the granting and termination of an individual's authorization. The proposed paragraph would be necessary to ensure that licensees and other entities who may be considering granting authorization to an individual under proposed Subpart C [Granting and Maintaining Authorization] can determine which category of authorization requirements in proposed Subpart C would apply to the individual, based upon the length of time that has elapsed since the individual's last period of authorization was terminated and whether the individual's last period of authorization was terminated favorably. The proposed categories of authorization requirements are discussed in Section IV. C and in this section, with respect to proposed Subpart C.

Proposed § 26.213(a)(4) would be added to require licensees and other entities to retain records that are related to any determination of fitness that was conducted under proposed § 26.189 [Determination of fitness]. The proposed requirement would be necessary to ensure that licensees and other entities who may be considering granting authorization to an individual who has previously undergone a determination of fitness can obtain these records for review as part of the authorization decision making process specified in proposed § 26.69 [Authorization with potentially disqualifying fitness-for-duty information]. In addition, if an individual who is subject to a followup testing and treatment plan transfers to another FFD program, the reviewing official and SAE of the receiving FFD program, which would take responsibility for implementing the testing and treatment plans, would require access to this information.

Proposed § 26.213(b)(1) and (b)(2) would require licensees and other entities to retain records related to FFD training, examinations, audits, audit findings, and corrective actions for at least 3 years, or until the completion of all related legal proceedings, whichever is later. The proposed paragraphs would retain the 3-year recordkeeping requirements of the current rule in §§ 26.21(b) and 26.22(c) for training records, and § 26.80(c) for audit findings and corrective action records.

Proposed § 26.213(c) would amend current § 26.71(c), which requires licensees to retain records related to any individual who was made ineligible for authorization for 3 years or longer under current § 26.27 [Management actions and sanctions to be imposed] until the Commission terminates each license under which the records were created. The proposed paragraph would require licensees and other entities to retain records concerning 5-year and permanent denials of authorization for 40 years or until, upon application, the NRC determines that the records are no longer needed. The proposed paragraph would add the requirement to retain records related to 5-year denials of authorization for consistency with the more stringent sanctions established in proposed § 26.75(c), (d), and (e)(2), in which the sanction of a 3-year denial of authorization has been eliminated, as discussed with respect to those proposed paragraphs. The 40-year retention requirement would be based on the longest expected working life of an individual, rather than on the period of the license. The termination of a license by the Commission would not mean that the individuals whose authorization was denied for 5 years or permanently denied under the licensee's FFD program would necessarily leave the industry. Requiring retention of the records pertaining to those individuals would ensure that the records of the 5-year and permanent denials are available, should the individual seek authorization from another licensee or other entity.

Proposed § 26.213(d) would replace the recordkeeping requirement in current § 26.20 [Written policy and procedures]. The proposed paragraph would require licensees and other entities to retain superseded FFD policies and procedures for at least 5 years or until they would no longer be needed to respond to a legal challenge. The period of time that superseded materials would be retained would be increased from 3 to 5 years to ensure that the materials are available if subsequent licensees and other entities require the information in making a determination of fitness. The proposed requirement to retain the policy and procedures related to any matter under legal challenge until the matter is resolved would be added to ensure that the materials remain available, should an individual, the NRC, a licensee, or another entity who is subject to this rule require access to them in a legal or regulatory proceeding.

Proposed § 26.213(e) would amend the requirement in current § 26.23(a) pertaining to the retention of written agreements for the provision of FFD program services. The proposed paragraph would require licensees and other entities to retain the written agreement for the life of the agreement (as in the current rule) or until completion of all legal proceedings related to an FFD violation that involved the services, whichever is later. The proposed requirement to retain the written agreements for any matter under legal challenge until the matter is resolved would be added to ensure that the materials remain available, should an individual, the NRC, a licensee, or another entity who would be subject to the rule require access to them in a legal or regulatory proceeding.

Proposed § 26.213(f) would be added to require licensees and other entities to retain records related to the background investigations, credit and criminal history checks, and psychological assessments of FFD program personnel, conducted under proposed § 26.31(b)(1)(ii), for the length of the individual's employment by or contractual relationship with the licensee or other entity, or until the completion of all related legal proceedings, whichever is later. The proposed paragraph would be consistent with the last phrase of current Section 2.6(c) in Appendix A to Part 26, which requires licensee testing facilities to

retain personnel files that include ''appropriate data to support determinations of honesty and integrity conducted in accordance with Section 2.3 of this appendix.'' The proposed period during which these records must be maintained would be based on the NRC's need to have access to the records for inspection purposes and the potential need for the records to remain available should an individual, the NRC, a licensee, or another entity who would be subject to this rule require access to them in a legal or regulatory proceeding. However, the proposed rule would establish a new limit on the period during which the records must be retained in order to reduce the burden associated with storing such records indefinitely.

Proposed § 26.213(g) would be added to require licensees and other entities to retain records of the certification of the scientific and technical suitability of any assays and cutoff levels used for drug testing that are not addressed in this part, provided by a qualified forensic toxicologist, as required under proposed § 26.31(d)(1)(i) and (d)(3)(iii)(C). The proposed paragraph would require the licensee or other entity to retain these records for the period of time during which the FFD program continues to test for drugs for which testing is not required under this part, uses more stringent cutoff levels than those specified in this part, or until the completion of all related legal proceedings, whichever is later. This proposed requirement would be necessary to ensure the NRC's access to the records for inspection purposes and that the records remain available should an individual, the NRC, a licensee, or another entity who would be subject to this rule require access to them in a legal or regulatory proceeding.

Section 26.215 Recordkeeping Requirements for Collection Sites, Licensee Testing Facilities, and Laboratories Certified by the Department of Health and Human Services

A new § 26.215 [Recordkeeping requirements for collection sites, licensee testing facilities, and laboratories certified by the Department of Health and Human Services] would be added to group together in one section the recordkeeping requirements that apply to collection sites, licensee testing facilities, and HHS-certified laboratories contained in current §§ 26.20 and 26.71, and, Sections 2.5(f), 2.6 (c), 2.7(a)(1), 2.7(f)(2), 2.7(g)(8), 2.7(n), 2.7(o)(1) and (o)(3), 2.8(e)(4), 2.9(g), and 3.1 in Appendix A to Part 26. The proposed rule would group these requirements in one section to make them easier to locate within the proposed rule, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.215(a) would retain the requirement in current Section 2.7(n) in Appendix A to Part 26, which mandates that HHS-certified laboratories and licensee testing facilities must maintain documentation of all aspects of the testing process for at least 2 years, and would extend this requirement to collection sites. The proposed rule would include collection sites within this provision because licensee testing facilities and collection sites may not be co-located, as was typically the case when the current rule was first published. The proposed paragraph would retain the provision in current Section 2.7(n) that the 2-year period may be extended upon written notification by the NRC or any licensee or other entity for whom services are being provided. The proposed rule would also add a requirement to retain the documentation until completion of all legal proceedings related to an FFD violation to ensure that the records remain available should an individual, the NRC, a licensee, or another entity who would be subject to this rule require access to them in a legal or regulatory proceeding.

Proposed § 26.215(b)(1)–(b)(14) would be added to list in a single paragraph the documents that must be retained by collection sites, licensee testing facilities, and HHS-certified laboratories. Specifically, those documents would include personnel files of individuals who are no longer working at a collection site, licensee testing facility or HHS-certified laboratory, chain-of-custody documents, quality assurance/quality control records, superseded procedures, all test data, test reports, records on performance testing, records on testing errors or unsatisfactory performance and the investigation and correction of the errors or unsatisfactory performance, performance records on certification inspections, records on preventative maintenance, records on negative test results based on scientific insufficiency, computer-generated data, printed or electronic copies of computer-generated data, records of individuals accessing secured areas in licensee testing facilities and HHS-certified laboratories, and records of EBT maintenance, inspection, and calibration. This listing of records to be retained comes from provisions of the current rule in § 26.20 and § 26.71(a); and in Appendix A to Part 26, Sections 2.7(a)(1), 2.7(f)(2), 2.7(g)(8), 2.7(n), 2.7(o)(1), 2.7(o)(3), 2.8(e)(4), 2.9(g), and 3.1. The proposed rule would group them together in a single paragraph to make them easier to locate within the rule, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Section 26.217 Fitness-for-Duty Program Performance Data

A new § 26.217 [Fitness-for-duty program performance data] would amend the requirements in current § 26.71(d) for collecting, compiling, and submitting FFD program performance data to reduce the burden on licensees and other entities and to make the reporting time consistent with the NRC's need for the information. Specifically, the proposed rule would require licensees and other entities to submit program performance data to the NRC every 12 months, rather than every 6 months. The proposed rule would make additional conforming changes to current § 26.71 for consistency with other revisions to the rule, as follows:

Proposed § 26.217(a) would retain the requirement in current § 26.71(d) that each FFD program subject to Part 26 must collect and compile FFD performance data.

Proposed § 26.217(b)(1)–(b)(8) would amend the second sentence of current § 26.71(d) to specify the FFD program performance data that a licensee or other entity must report, including the random testing rate, the drugs for which is conducted and cutoff levels, workforce populations tested, numbers of tests administered and results, conditions under which the tests were performed, substances identified, number of subversion attempts by type, and summary of management actions. The proposed paragraph is identical to the requirements of the current provision with two exceptions: (1) The current rule does not require reporting the number of subversion attempts by type and (2) the proposed rule would not require a list of events reported during the reporting period.

The proposed rule would add a requirement for licensees and other entities to report the number of subversion attempts by type. This proposed reporting requirement would be necessary to enable the NRC to monitor the ongoing integrity and effectiveness of FFD programs in detecting subversion attempts, consistent with the NRC's heightened concern with this issue, as discussed with respect to proposed §§ 26.31(d)(3)(i) and 26.75(b). Although this information would be available to NRC inspection personnel at each site,

it would be costly and an inefficient use of inspection resources for inspectors to aggregate and report it annually. Under the current rule, licensees typically report subversion attempts they have detected under the requirement to summarize ''events reported'' in current § 26.71(d). Therefore, the NRC expects that the proposed reporting requirement would impose a minimal additional burden.

The proposed rule would eliminate the current requirement to include the number of events reported to the NRC during the reporting period. The current reporting requirement would be eliminated because the NRC has access to this information through other avenues and reporting it twice would be unnecessary.

Proposed § 26.217(c) would amend the portions of current § 26.71(d) that require licensees and other entities to analyze the FFD program performance data semi-annually. The proposed paragraph would require licensees and other entities to analyze FFD program performance data annually, rather than semi-annually, and retain the requirement that actions must be taken to correct program weaknesses. NRC experience in reviewing FFD program performance reports since the rule was first promulgated has shown that reporting twice per year is unnecessary to ensure the continuing effectiveness of FFD programs. Therefore, the proposed rule would relax the semi-annual analysis and reporting requirement. Further, the proposed paragraph would require licensees and other entities to retain for 3 years records of the data, analysis, and corrective actions taken, which is the same as the current requirement in § 26.71(d). However, the proposed rule would add a requirement to retain the documentation until completion of any legal proceedings related to an FFD violation to ensure that the records remain available should an individual, the NRC, a licensee, or another entity who would be subject to this rule require access to them in a legal or regulatory proceeding.

Proposed § 26.217(d) would retain the last sentence of current § 26.71(d), which requires that any licensee who temporarily suspends an individual's authorization or takes administrative actions on the basis of a non-negative initial test result for marijuana or cocaine [under the provisions of current § 26.24(d)] must report the results in the annual summary by processing stage (*i.e.*, initial testing at the licensee testing facility, testing at the HHS-certified laboratory, MRO determination). The proposed paragraph would continue to require that the report must include the number of administrative actions taken against individuals for the reporting period. However, the term, ''temporarily suspend,'' would be eliminated from the proposed paragraph and replaced with the term, ''administratively withdraw authorization,'' in response to stakeholder requests at the public meetings discussed in Section V. The stakeholders noted that an individual is either authorized to perform job duties under Part 26 or not, and that the concept of suspending an individual's authorization is conceptually inconsistent. The NRC concurred with this observation and, therefore, eliminated the inaccurate phrase from the proposed rule.

Proposed § 26.217(e) would amend portions of current § 26.71(d) to require licensees and other entities to submit the annual summary to the NRC by March 1 of the following year, rather than the current requirement of a semi-annual summary to be reported within 60 days of the end of each 6-month reporting period. This proposed change would be made for consistency with the revised requirement to submit the report semi-annually in proposed § 26.217(c), as discussed with respect to that paragraph.

Proposed § 26.217(f) would retain the requirement in current § 26.71(d) that program performance data may be submitted in a consolidated report as long as the data are reported separately for each site.

Proposed § 26.217(g) would introduce a new requirement that C/Vs who maintain an approved drug and alcohol testing program must submit to the NRC the same program performance data that would be required from licensees and other entities who would be subject to the proposed rule, either directly or via the licensee or other entity to whom the C/V provides services, ensuring that duplicate reports are not provided to the NRC. This proposed requirement is needed because the proposed rule would apply directly to C/Vs who maintain licensee-approved programs, rather than applying only to licensees under the current rule, as discussed with respect to proposed § 26.3(d).

Section 26.219 Reporting Requirements

A new § 26.219 [Reporting requirements] would replace current § 26.73 [Reporting requirements] and combine them with current Section 2.8(e)(4), (e)(5), and (e)(6) in Appendix A to Part 26. The proposed section would group into one section reporting requirements that are interspersed throughout the current rule to meet Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule.

Proposed § 26.219(a) [Required reports] would be added to introduce the proposed section, consistent with Goal 6 of this rulemaking, which is to improve clarity in the organization and language of the rule, by specifying the categories of significant events that licensees and other entities would report to the NRC (*i.e.*, significant violations of the FFD policy, significant FFD program failures, and errors in drug and alcohol testing). The second sentence of the proposed paragraph would retain the requirement in current § 26.73(c) that significant events must be reported under this section, rather than under the provisions of 10 CFR 73.71.

Proposed § 26.219(b) [Significant FFD policy violations or programmatic failures] would reorganize and amend current § 26.73(a)(1), (a)(2), and (b). Proposed § 26.219(b) would retain the requirement in current § 26.73(b) that notifications of events must be made to the NRC Operations Center within 24 hours of their discovery, but the proposed rule would present this requirement at the beginning of the paragraph to clarify that it applies to all of the events that are listed in the proposed paragraph.

Proposed § 26.219(b)(1) would amend current § 26.73(a)(1), which requires licensees to report the sale, use, or possession of illegal drugs within a protected area. The proposed paragraph would add a requirement for licensees and other entities also to report the consumption or presence of alcohol in a protected area. This proposed change would be made for consistency with the NRC's increased concern with the adverse effects of alcohol abuse on safe performance, as discussed with respect to proposed § 26.75(e). The proposed change would also be consistent with the revised performance objective in proposed § 26.23(d), which is to provide reasonable assurance that the workplaces subject to this part are free from the presence and effects of illegal drugs and alcohol, as discussed with respect to that paragraph. The consumption or presence of alcohol in a protected area would constitute a significant programmatic failure in achieving this performance objective.

Proposed § 26.219(b)(2) would amend current § 26.73(a)(2), which requires licensees to report any acts by licensed operators and supervisory personnel involving the sale, use, or possession of a controlled substance; resulting in confirmed positive tests on such persons; involving consumption of alcohol within the protected area; or resulting in a determination of unfitness

for scheduled work due to the consumption of alcohol. The proposed rule would expand the current reporting requirement to include SSNM transporter personnel and FFD program personnel. The proposed change would be made to ensure that the NRC is informed of events involving these individuals because of the important roles they play in assuring public health and safety and the common defense and security, in the former case, and the integrity of the FFD program, in the latter.

Proposed § 26.219(b)(2)(i) would retain current § 26.73(a)(2)(i), which requires licensees and other entities to report any acts by the subject individuals that involve the use, sale, or possession of a controlled substance.

Proposed § 26.219(b)(2)(ii) would combine and amend current § 26.73(a)(2)(ii) and (a)(2)(iv), which require licensees and other entities to report any confirmed positive tests on such persons and any acts by the subject individuals that result in a determination of unfitness for scheduled work due to the consumption of alcohol, respectively. The proposed paragraph would amend the current requirements by requiring licensees and other entities to report any acts by the subject individuals that result in a determination that the individual has violated the licensee's or other entity's FFD policy (including subversion as defined in proposed § 26.5 [Definitions]). This proposed change would be made for consistency with two other changes to the proposed rule: (1) The addition of validity testing requirements to the proposed rule, as discussed with respect to proposed § 26.31(d)(3)(i), and (2) the new requirements in proposed Subpart D [Management actions and sanctions] to impose the same sanctions for confirmed positive alcohol test results as those required for confirmed positive drug test results, as discussed with respect to proposed § 26.75(e). Therefore, the proposed rule would require licensees and other entities to report confirmed non-negative validity test results, any other acts to subvert or attempt to subvert the testing process, and confirmed positive alcohol test results for these individuals.

Proposed § 26.219(b)(2)(iii) would amend current § 26.73(a)(2)(iii), which requires licensees and other entities to report any events involving the consumption of alcohol within the protected area by the subject individuals, by adding the requirement to report any acts involving the consumption of alcohol while performing the job duties that require these individuals to be subject to this part. This proposed change would be made for consistency with the proposed addition of SSNM transporters and FFD program personnel to this paragraph, as discussed with respect to proposed § 26.219(b)(2), because transporter and FFD program personnel typically do not work within a protected area. However, the NRC maintains an interest in the consumption of alcohol by the individuals listed in proposed § 26.219(b)(2) while they are performing the duties that require them to be subject to this part at any location.

Proposed § 26.219(b)(3) would be added to establish a new requirement for licensees and other entities to report any intentional act that casts doubt on the integrity of the FFD program. Because of the wide array of possible intentional acts that could cast doubt on the integrity of the FFD program and would be of concern to the NRC, the proposed rule would not specify the acts that licensees and other entities must report. However, such intentional acts may include, but would not be limited to: (1) Notifying individuals, outside of the FFD program's normal notification procedures, that they will be selected for random or followup testing on a particular date or at a specific time so that the individuals have sufficient time available to attempt to mask drug use by, for example, obtaining a substitute urine specimen or an adulterant, drinking large amounts of liquid in order to provide a dilute urine specimen, or leaving the site to avoid testing; (2) attempting to divert or tamper with urine specimens that are being prepared for transfer to a licensee testing facility or HHS-certified laboratory by stealing the specimens, substituting specimens in the package, or altering the specimens' custody-and-control documentation; (3) attempting to tamper with testing devices and instruments so that they provide false negative test results; (4) collusion by collection site personnel, an MRO, or MRO staff with an individual who is subject to testing to alter the individual's test results; and (5) attempts by information technology personnel to alter the software that is used by the FFD program to randomly select individuals for testing to ensure that specific individuals are not selected. The intentional acts that the proposed rule would require licensees and other entities to report could involve any aspect of the operations of the FFD program and the testing process.

The proposed rule would add this new reporting requirement because of other changes to the proposed rule that would permit licensees and other entities to rely on other Part 26 programs to a much greater extent than currently. The proposed rule would permit licensees and other entities to rely on testing performed by another Part 26 program, FFD training, other programs' suitable inquiries and determinations of fitness, and audits. Therefore, intentional acts that cast doubt on the integrity of one FFD program may also indirectly affect the integrity and effectiveness of other FFD programs. The NRC would require reporting of these acts in order to monitor their impacts and ensure that other FFD programs that may be affected are informed of the problem so that they may take corrective actions, if necessary.

Proposed § 26.219(b)(4) would be added to require licensees and other entities to report any programmatic failure, degradation, or discovered vulnerability of an FFD program that may permit undetected drug or alcohol use or abuse by individuals within a protected area, or by individuals who are assigned to perform job duties that require them to be subject to this part. In Item 10.1 of NUREG–1385, the NRC emphasized that the NRC expects licensees to exercise prudent judgment in determining whether unusual situations should be reported and that the significant events the licensees must report are not limited to the examples contained in the rule. However, the NRC understands that many significant events that would be useful for formulating public policy or that the NRC should respond to in a timely fashion have not been reported because licensee management decided not to report the event unless it was specifically required by the rule. Therefore, the proposed rule would add § 26.219(b)(4) to clarify that significant events and programmatic failures are not limited to those listed in proposed § 26.219(b), but would include any programmatic failures or weaknesses that potentially could permit substance abuse to be undetected.

Proposed § 26.219(c) [Drug and alcohol testing errors] would reorganize and amend current requirements for reporting errors in drug and alcohol testing for organizational clarity. The proposed rule would retain the current requirements for licensees and other entities to investigate and take corrective actions for drug and alcohol testing errors in proposed §§ 26.137(f) and 26.167(g) for licensee testing facilities and HHS-certified laboratories, respectively, but would move the reporting requirements to this proposed paragraph.

Proposed § 26.219(c)(1) would update the portion of current Section 2.8(e)(4) in Appendix A to Part 26 that mandates that licensees and other entities must report within 30 days of completing an investigation of any testing errors or unsatisfactory performance in blind performance testing at either a licensee testing facility or an HHS-certified laboratory. The proposed paragraph would amend the current requirement by specifying that the report of the incident must include a description of the corrective actions taken or planned. Although licensees and other entities have consistently included a description of corrective actions in such reports, the proposed rule would add this as a requirement to clarify the NRC's intent in the language of the rule.

In addition, the proposed paragraph would add cross-references to other sections of the proposed rule that define processes that may also result in the identification of errors, including the reviews required under proposed § 26.39 [Review process for fitness-for-duty violations] and proposed § 26.185 [Determining a fitness-for-duty policy violation]. The NRC intended, in the original rule, that testing or process errors discovered in any part of the program, including these review processes, would be investigated as an unsatisfactory performance of a test. Thorough investigation and reporting of such test results will continue to assist the NRC, the licensees, HHS, and the HHS-certified laboratories in preventing future occurrences. Therefore, this proposed change would be made to clarify that the requirement to investigate, correct, and report errors would not be limited only to errors identified through blind performance testing in licensee testing facilities and HHS-certified laboratories but also would apply to errors identified through any means.

Proposed § 26.219(c)(2) would amend the portion of current Section 2.8(e)(5) in Appendix A to Part 26 that requires licensees to promptly notify the NRC if a false positive error occurs on a blind performance test sample. The proposed paragraph would replace the current requirement that the report must be made ''promptly'' with a requirement to report the false positive error within 24 hours of the discovery. This proposed change would be made as a result of the public meetings discussed in Section V, during which the stakeholders noted that ''promptly'' is vague. Therefore, the proposed rule would clarify the current requirement by establishing a 24-hour time limit for the notification to meet Goal 6 of this rulemaking, which is to improve clarity in the language of the rule.

The proposed rule would establish a 24-hour time limit because false positive test results would cause licensees and other entities to impose sanctions on individuals who have not, in fact, abused drugs. The HHS views false positive test results very seriously and may de-certify a laboratory as a result. The 24-hour time limit would be necessary to ensure that the NRC can quickly notify the HHS of the problem so that the HHS may initiate the applicable steps required under the HHS Guidelines for such circumstances. In addition, the NRC may use the information to inform other licensees and entities who rely on the same HHS-certified laboratory of the problem, so that they may determine whether to require the laboratory or a second laboratory to retest any specimens they have submitted.

Proposed § 26.219(c)(3) would be added to require licensees and other entities to report, within 24 hours of the discovery, any false negative errors identified through quality assurance checks of validity screening devices, if the licensee or other entity uses these devices for validity testing at a licensee testing facility. The proposed reporting requirement would be necessary to ensure that the NRC is aware of any device failures, so that other Part 26 programs that rely on the devices may be informed of the error and stop using them until the cause of the error is identified and the problem is resolved. Continued use of unreliable devices may permit attempts to subvert the testing process to go undetected with the result that individuals who have engaged in a subversion attempt may be granted or allowed to maintain authorization.

The proposed rule would not require licensees and other entities to report false positive errors identified through quality assurance checks of validity screening devices for two reasons. First, other provisions of the proposed rule would prohibit licensees and other entities from taking management actions or imposing sanctions on individuals on the basis of validity screening test results, as discussed with respect to proposed § 26.75(h). Second, donors would be protected from adverse consequences of false positive errors because any specimen that yields a non-negative validity screening test result would be forwarded to an HHS-certified laboratory for initial and confirmatory testing, if required, before a licensee or other entity would be permitted to act, as discussed with respect to proposed § 26.137(c). Therefore, reporting of false positive errors would be unnecessary to protect the interests of either donors or the public.

Proposed § 26.219(d) [Indicators of programmatic weaknesses] would be added to require licensees and other entities to document, trend, and correct non-reportable FFD issues that identify programmatic weaknesses under the licensee's or other entity's corrective action program. The proposed rule would add this requirement because some licensees have not documented, trended, or corrected programmatic weaknesses, while others have created separate systems, with the result that corrective actions for FFD program weaknesses have not been timely or effective. Therefore, the proposed rule would add these requirements for consistency with Criterion XVI in Appendix B to 10 CFR Part 50 to FFD programs and to meet Goal 3 of this rulemaking, which is to improve the effectiveness and efficiency of FFD programs.

The proposed paragraph would also require licensees and other entities to document, trend, and correct any programmatic weaknesses in a manner that protects individuals' privacy. For example, the proposed paragraph would prohibit licensees and other entities from documenting a single non-negative drug test result in the corrective action program, because such documentation, along with other cues in the work environment, would permit any individual who has access to the corrective action system easily to identify the donor. However, under the proposed rule, the NRC would expect licensees and other entities to document, trend, analyze, and take corrective actions for an increase in the rate of confirmed non-negative test results in the aggregate, if the licensee or other entity determines that the increasing trend indicates programmatic weaknesses rather than improved effectiveness of the FFD program. The proposed requirement to protect individuals' privacy within the corrective action program would be added to meet Goal 7 of this rulemaking, which is to protect the privacy and due process rights of individuals who are subject to Part 26.

Subpart K—Inspections, Violations, and Penalties

A new Subpart K [Inspections, Violations, and Penalties] would be added to the proposed rule to combine into one subpart current §§ 26.70 [Inspections], 26.90 [Violations] and 26.91 [Criminal penalties]. Proposed § 26.221 [Inspections] would retain the requirements in current § 26.70.

Proposed § 26.223 [Violations] would retain the requirements in current § 26.90 [Violations]. Proposed § 26.225 [Criminal penalties] would retain the requirements in current § 26.91 [Criminal penalties].

Appendix A would be deleted in its entirety.

VII. Issues for Public Comment

The NRC seeks public comment on the following issues. Public comments should be submitted to the NRC as indicated under the heading **ADDRESSES.**

1. Proposed § 26.75 in Subpart D would increase the sanctions for certain testing-related actions by requiring that: ''Any act or attempted act to subvert the testing process, including refusing to provide a specimen and providing or attempting to provide a substituted or adulterated specimen, for any test required under this part must result in permanent denial of authorization,'' and ''for individuals whose authorization was denied for 5 years * * * any subsequent violation of the drug and alcohol provisions of an FFD policy must immediately result in permanent denial of authorization.'' The NRC requests comments regarding these proposed changes specifically when compared to the 5-year ban available through the agency's enforcement policy for other acts of deliberate misconduct.

2. Proposed § 26.119 [Determining ''shy'' bladder] would establish a process for determining whether there is a medical reason that a donor is unable to provide a urine specimen of at least 30 mL. The NRC added this proposed section in response to stakeholder requests and adapted the process from the DOT's Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR 40.197). The DOT Procedures also include processes for determining whether there is a medical reason that a donor is unable to provide a specimen of oral fluids (49 CFR 40.263) or a breath specimen (49 CFR 40.265) of sufficient quantity to support alcohol testing. The NRC invites comments on whether the NRC should consider incorporating these processes for insufficient oral fluids and breath specimens in Part 26.

3. Proposed § 26.31(d)(3)(iii)(C) would permit licensees and other entities to specify more stringent cutoff levels for the panel of drugs for which testing is required under this part without informing the NRC within 60 days and without obtaining the written approval of the NRC. Proposed § 26.31(d)(1)(i)(D) and (d)(1)(ii) would also permit licensees and other entities to test for drugs and drug metabolites in addition to those specified in proposed § 26.31(d)(1) without informing or obtaining the written approval of the NRC. However, the proposed paragraphs would require that the scientific and technical suitability of the more stringent cutoff levels and of the assays and cutoff levels used to test for additional drugs or drug metabolites must be evaluated and certified, in writing, by a qualified, independent forensic toxicologist. Certification by a forensic toxicologist would not be required in three circumstances: (1) If the HHS issues more stringent cutoff levels in the HHS Guidelines and the licensee or other entity adopts the revised HHS cutoffs; (2) if the HHS Guidelines are revised to authorize use of the assay in testing for the additional drug or drug metabolites and the licensee or other entity uses the cutoff levels established in the HHS Guidelines for the drug or drug metabolites; and (3) if the licensee or other entity received written approval from the NRC for the lower cutoff levels and/or for testing for the additional drugs or drug metabolites, under current Section 1.1(2) in Appendix A to Part 26. The proposed paragraphs differ from the current requirement in Section 1.1(2) of Appendix A to Part 26. The NRC requests comments regarding these proposed changes.

4. Proposed §§ 26.133 and 26.163 would raise the cutoff levels for initial and confirmatory tests for opiates from 300 nanograms (ng) per milliliter (mL) to 2,000 ng/mL. The proposed rule would also require testing for 6-acetylmorphine (6-AM), a metabolite that comes only from heroin, using a 10 ng/mL confirmatory cutoff level for specimens that tested positive on the initial test. The proposed cutoff levels and new test would be consistent with those used by HHS and DOT, and would reduce the number of specimens in Part 26 programs that test positive for opiates at an HHS-certified laboratory but are subsequently determined to be negative by the MRO after consultation with the donor. The NRC invites comment on these proposed changes.

5. In proposed §§ 26.131, 26.137, 26.161, and 26.167, the NRC would add new requirements for validity testing of urine specimens to detect specimens that may have been adulterated, substituted, or diluted. The new requirements are adapted from practices the HHS published in the **Federal Register** on April 13, 2004 (69 FR 19643) as a final rule. The NRC invites public comment on the following issues related to the proposed validity testing requirements.

a. Proposed § 26.137 would establish quality assurance and quality control requirements for conducting validity and drug tests of urine specimens. The NRC seeks input regarding any technical and methodological barriers to implementing these requirements at licensee testing facilities.

b. Proposed §§ 26.161(d) and 26.185(h) would establish criteria and procedures for determining whether a specimen has been substituted. A specimen would be reported by the HHS-certified laboratory to the MRO as substituted if it has a creatinine concentration of less than 2 mg/dL and specific gravity of less than or equal to 1.0010, or equal to or greater than 1.0200. For the HHS-certified laboratory to report a specimen as substituted, results in these ranges would be necessary on both the initial and confirmatory creatinine and specific gravity tests on two separate aliquots of the specimen. The NRC invites comments on the proposed provisions.

6. Proposed § 26.183(a) requires that ''The MRO shall be knowledgeable of this part and of the FFD policies of the licensees and other entities for whom the MRO provides services.'' The NRC invites comments on whether Part 26 should establish specific training requirements for the MRO related to this part and the licensee's or other entity's programs for which the MRO provides services.

7. The NRC is considering incorporating future changes to the draft HHS Guidelines that were published as a proposed rule for public comment in the **Federal Register** on April 13, 2004 (69 FR 19672) relating to the permission in this proposed Part 26 rule for licensees and other entities to use non-instrumented validity tests to determine whether a urine specimen appears to be adulterated, diluted, or substituted and requires further testing at an HHS-certified laboratory. Proposed Part 26 would permit licensees and other entities to use these devices for validity screening tests, in lieu of the instrumented validity testing required in the April 13, 2004, final version of the HHS Guidelines. Should any changes be made to those draft HHS Guidelines between issuing this proposed rule and issuing the final 10 CFR Part 26 rule, those changes would be considered for incorporation. Any comments related to the potential incorporation of those changes are of interest.

8. Proposed Subpart I, Managing Fatigue, includes many requirements related to worker fatigue at nuclear power plants. The NRC is especially interested in comments on the following provisions:

a. Proposed § 26.199(d)(2)(ii) and (d)(2)(iii) would require licensees to provide individuals who are subject to the proposed work hour limits with at least one 24-hour rest break in any 7-day period and at least one 48-hour rest break in any 14-day period, except during the first 14 days of any outage, as well as certain other circumstances for security force personnel.

b. Proposed § 26.199(d)(3) would permit licensees to waive individual work hour limits and rest break requirements only in circumstances in which it is necessary to mitigate or prevent a condition adverse to safety, or to maintain the security of the facility. Proposed § 26.197(e)(1) would require licensees to report the number of waivers granted in a year.

c. Proposed § 26.199(f) would prohibit job duty groups that are subject to work hour controls from working more than a maximum collective average of 48 hours per person per week, except during the first 8 weeks of any outage, as well as certain other circumstances for security force personnel.

9. As a means of determining the flexibility of the proposed rule work hour controls in § 26.199, the NRC is seeking public comment on work-scheduling examples that meet the requirements of the proposed rule and whether such schedules afford a reasonable degree of flexibility to licensee management.

10. The NRC is seeking comment on the exclusions from certain work hour controls that would be allowed by proposed §§ 26.199(d)(2)(iii), (f)(1) and (f)(2) during maintenance and refueling outages, and how these exclusions could affect human error. The NRC is specifically interested in whether a more precisely defined rule scope with more limited outage exclusions would better meet the stated objectives of the rule.

11. The NRC is seeking public comment on alternatives to the group work hour controls that could also address cumulative fatigue, such as individual work hour limits based on a longer term (*e.g.*, monthly or quarterly).

12. Proposed § 26.199(a) would require any individual who performs duties within specified job duty groups to be subject to the work hour control provisions in § 26.199. Other individuals, beyond those specified within the scope of § 26.199(a), might substantially impact the outcome of risk-significant work, such as certain engineers (*e.g.*, Shift Technical Advisors). The NRC requests comment on the inclusion of other individuals in the scope of § 26.199(a). The NRC is also seeking comments on an alternative approach for identifying the specific job functions that would be subject to these requirements. Specifically, the NRC is interested in whether, as an alternative, the scope should instead be structured to define attributes of the job functions (*e.g.*, time-critical nature of decisions needed to ensure public health and safety, operational control of risk-important equipment) that would fall within the scope of the proposed work hour control provisions in § 26.199. Under such an alternative, the licensee would then be required to identify the specific job functions that fit the defined attributes.

13. The NRC is considering amending 10 CFR 50.109, 70.76, and 76.76 to exclude certain future changes to Part 26 from current backfit requirements. The scope of the exclusions would be limited to only those changes to Part 26 that would be necessary to incorporate relevant revisions to the HHS Guidelines when they are published by HHS as final rules. Examples of changes to the HHS Guidelines that may be incorporated into Part 26 in future rulemakings may include, but would not be limited to (1) Adopting changes to the cutoff levels established in the Guidelines; (2) the addition or deletion of drugs and adulterants for which testing would be required; and (3) changes in the specimens, instruments, or assays used in drug and validity testing. The NRC requests comment on excluding such future changes to Part 26 from backfit analysis requirements.

14. Proposed §§ 26.135(b) and 26.165(a)(4) and (b)(1) would prohibit licensees and other entities, the MRO, and the NRC from initiating testing of the specimen in Bottle B or retesting an aliquot from a single specimen without the donor's written permission. The NRC is considering an alternative approach that would permit a licensee or other entity to initiate testing of the specimen in Bottle B or retesting an aliquot from a single specimen without the donor's written permission only if all of the following conditions are met: (1) The first results from testing the specimen were confirmed as non-negative by the MRO; (2) the donor has requested a review under proposed § 26.39 or initiated legal proceedings; and (3) the testing is conducted in accordance with proposed § 26.165(c)–(e), as applicable. Under either the proposed provisions or the alternative approach, the proposed rule would require the licensee or other entity to administratively withdraw the donor's authorization until the results from Bottle B or the retest results are available and to rely only on those results in determining whether the licensee or other entity would be required to take management actions or impose sanctions on the donor. The NRC is seeking an appropriate balance between protecting donors' rights to privacy and due process under the rule and the protection of public health and safety and the common defense and security, and invites public comment on the proposed and alternative approaches.

15. The NRC is seeking comment regarding the administrative reporting burden that the proposed rule provisions would create. Provide any comments as described in Section XIII, Paperwork Reduction Act Statement, of this notice.

VIII. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR Part 26 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

IX. Agreement State Compatibility

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

X. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. The NRC requests comments on the proposed rule specifically with respect to the clarity

and reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no consensus standards regarding the methods for performing drug and alcohol testing, fatigue assessments, or other aspects of Fitness For Duty Programs, that would apply to the requirements that would be imposed by this rule, with the exception of short-term work hour limits for licensed operators, senior operators, and the shift technical advisor. The NRC notes the inclusion of these limits in a 1988 American Nuclear Society standard on administrative controls and quality assurance for the operational phase of nuclear power plants, ANSI/ANS–3.2–1998.

The NRC does not believe that this standard is sufficient, as it does not apply to other categories of workers who would be subject to the provisions of this proposed rule, such as maintenance, health physics, chemistry, fire brigade, and security force personnel. Additionally, the standard is insufficient because it does not provide the comprehensive fatigue management approach that this proposed rule would, and is lacking provisions to mitigate long-term fatigue, provide a process for self-declarations of fatigue by workers, and provide for rest breaks.

Further, the standard does not adequately mitigate short-term fatigue, because it does not restrict deviations from the short-term limits to only those unique instances necessary for the safety and security of the plant. The standard only requires that exceptions be minimized and that they be approved by the plant manager or designee. The provisions in the standard are identical to those currently incorporated as requirements in some nuclear power plants' technical specifications. Section IV. D explains that enforcement of the technical specification requirements is complicated by the fact that the language is largely advisory, and key terms have not been defined, with the result that the requirements have been interpreted inconsistently.

For the reasons noted above, the ANS standard cannot be used in lieu of the proposed rule provisions to meet the objective of comprehensive fatigue management.

XII. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination reads as follows:

The proposed rule, if adopted, would amend the NRC's requirements for FFD programs which are contained in 10 CFR Part 26 to address the following needs: (1) Update and enhance the consistency of 10 CFR Part 26 with advances in other relevant Federal rules and guidelines, including the U.S. Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Guidelines) and other Federal drug and alcohol testing programs (*e.g.*, those required by the U.S. Department of Transportation [DOT]) that impose similar requirements on the private sector; (2) strengthen the effectiveness of FFD programs at nuclear power plants in ensuring against worker fatigue adversely affecting public health and safety and the common defense and security by establishing clear and enforceable requirements for the management worker fatigue; (3) improve the effectiveness and efficiency of FFD programs; (4) improve consistency between FFD requirements and access authorization requirements established in 10 CFR 73.56, as supplemented by orders to nuclear power plant licensees dated January 7, 2003; (5) improve 10 CFR Part 26 by eliminating or modifying unnecessary requirements; (6) improve clarity in the organization and language of the rule; and (7) protect the privacy and due process rights of individuals who are subject to 10 CFR Part 26.

It would also grant, in part, a December 30, 1993, petition for rulemaking (PRM–26–1) from Virginia Electric and Power Company (now Dominion Virginia Power) which requested a relaxation in required audit frequencies and PRM–26–2, dated December 28, 1999, from Barry Quigley, by establishing clear and enforceable requirements concerning the management of worker fatigue. In addition, the proposed rule would continue to apply to all personnel with unescorted access to the protected area of a nuclear power plant, consistent with the Commission's denial (SRM–SECY–04–0229) of an exemption request by IBEW Local 1245 dated March 13, 1990, and renewed on January 26 and December 6, 1993.

The proposed rule would not significantly increase the probability or consequences of an accident. No changes are being made in the types or quantities of radiological effluents that may be released off site, and there is no significant increase in public or occupational radiation exposure since there is no change to facility operations that could create a new or affect a previously analyzed accident or release path.

With regard to non-radiological impacts, no changes are being made to non-radiological plant effluents and there are no changes in activities that would adversely affect the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

The primary alternative to this action would be the no action alternative. The no action alternative would result in continued inconsistencies between FFD and access authorization requirements, continued difficulties in implementation of the regulation due to the current organization of the rule, continued use of less current technologies and advances in testing and a continued lack of a comprehensive fatigue management program. The no action alternative would provide little or no safety, risk, or environmental benefit.

No outside agencies or persons were consulted, or outside sources used or relied upon, in the preparation of this environmental assessment.

The determination of this environmental assessment is that there will be no significant environmental impact from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment, provided above, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XIII. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: New.

The title of the information collection: 10 CFR Part 26, ''Fitness for Duty Programs.''

The form number if applicable: Not applicable.

How often the collection is required:

On occasion: Significant FFD policy violations or programmatic failures; drug and alcohol testing errors; indicators of programmatic weaknesses; possible impairment of an NRC employee or NRC contractor;

Annually: FFD program performance data.

Who will be required or asked to report:

—Licensees authorized to operate a nuclear power reactor;

—Licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) under 10 CFR Part 70;

—Corporations, firms, partnerships, limited liability companies, associations, or other organizations that obtain a certificate of compliance or an approved compliance plan under 10 CFR Part 76, if the entity engages in activities involving formula quantities of SSNM; and

—Contractor/vendors (C/Vs) who implement FFD programs or program elements, to the extent that licensees and other entities rely upon those C/V FFD programs or program elements to meet the requirements of this part.

An estimate of the number of annual responses: 5,540 (5,504 responses plus 36 recordkeepers).

The estimated number of annual respondents: 36 FFD programs (used by 65 nuclear power plants, 2 fuel cycle facilities, 2 C/Vs, and one mixed-oxide fuel fabrication facility), of which 31 FFD programs (used by 65 nuclear power plant facilities) are also required to include fatigue management programs with additional reporting and recordkeeping requirements.

An estimate of the total number of hours needed annually to complete the requirement or request: 545,942 hours, including 125,239 hours for one-time program implementation, 25,727 hours annually for reporting (an average of 715 hours per respondent) + 394,976 hours annually for recordkeeping (an average of 10,972 hours per recordkeeper).

Abstract: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for its Fitness for Duty (FFD) programs to completely revise 10 CFR Part 26 to update and clarify the regulations, and also add requirements for fatigue management at nuclear power plants. The proposed rule would ensure that individuals subject to these regulations are trustworthy and reliable, as demonstrated by avoiding substance abuse, and are otherwise fit for duty. The proposed rule would also ensure that workplaces subject to these regulations are free of the presence and effects of illegal drugs and alcohol.

The recordkeeping and reporting requirements in the proposed rule include provisions requiring licensees and other entities to develop and maintain policies and procedures; retain records of training, qualification and authorization of individuals; retain records related to drug and alcohol collections and tests; retain other records related to the collection, testing and review processes; report FFD program performance and significant violations, program failures and testing errors; and retain records related to employee assistance programs. Records and reports are also required under the proposed new fatigue management component of the FFD program.

The recordkeeping and reporting requirements would be mandatory for licensees and other entities subject to the rule. The NRC would use the reports to assess the effectiveness of FFD programs for those subject to the rule, and whether the provisions are implemented as the NRC intends.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this proposed rule and are also available at the rule forum site, *http://ruleforum.llnl.gov.*

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by September 26, 2005, to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0146), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also comment by telephone at (202) 395–3087.

Public Protection Notification

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

XIV. Regulatory Analysis

The NRC has prepared a draft Regulatory Analysis on this proposed regulation. The draft regulatory analysis was prepared in accordance with the NRC's Regulatory Analysis Guidelines (RA Guidelines), NUREG/BR–0058, Revision 4, dated September 2004. The draft Regulatory Analysis consists of three parts. First, an aggregate analysis of the entire rule was performed. Second, a screening review for disaggregation was performed to identify any individual provisions that could impose costs disproportionate to the benefits attributable to each provision. Finally, a separate analysis of the proposed rule's provisions addressing worker fatigue was performed. A description of each of these three elements is discussed below. The analysis is available as discussed above under the **ADDRESSES** heading. Single copies may be obtained from the contact listed above under the **FOR FURTHER INFORMATION CONTACT** heading. The Commission requests public comment on the draft Regulatory Analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

A. Aggregate Analysis

Consistent with the RA Guidelines, an aggregate analysis of the entire rulemaking was performed. The provisions of the rule relating to drug and alcohol testing (and other general FFD program requirements) are estimated to result in net present value savings to industry of $116 million–

$183 million (using 7 percent and 3 percent real discount rates), consisting of $2 million in one-time costs and $9 million in annual net savings. The worker fatigue portions of the proposed rule are estimated to cost industry $585 million–$913 million net present value (using the 7 percent and 3 percent real discount rates, respectively), consisting of $19 million in one-time costs and $42 million in annual net costs. The net present value of the entire proposed rule, including both the worker fatigue and drug and alcohol testing portions, is estimated to be a cost to industry of $469 million–$730 million (using 7 percent and 3 percent real discount rates), which consists of $21 million in one-time costs and $33 million in annual costs. In addition, the proposed rule is estimated to be a cost to the NRC of $615,000–$947,000 net present value (using 7 percent and 3 percent real discount rates), consisting of $30,000 in one-time costs and $45,000 in annual net costs.

The NRC also separately evaluated the improvement in worker performance expected from the impact of selected fatigue management provisions on unplanned reactor scrams, reactor accidents, lost and restricted work cases (injuries), fire mitigation, and security. Those present value savings are estimated to be $103 million–$167 million (using 7 percent and 3 percent real discount rates), and have not been subtracted from the net present value of the entire proposed rule listed above because the NRC considers the costs of the proposed rule to be justified without these quantitative savings, which are only included to illustrate further justification for the rulemaking.

The NRC concludes that the costs of the rule are justified in view of the qualitative benefits evaluated in Section 4.1.2 of the draft Regulatory Analysis. The basic analysis measures the incremental impacts of the proposed rule relative to a baseline that assumes full licensee compliance with existing NRC requirements, including current regulations and any relevant orders or enforcement discretion. The aggregate analysis is contained in Section 4.1 of the draft regulatory analysis.

B. Screening Review for Disaggregation

The regulatory analysis also discusses the screening review for disaggregation performed by the staff. The analysis was performed consistent with Section 4.3.2 of the RA Guidelines to determine if there are provisions whose costs are disproportionate to the benefits and whose inclusion in the aggregate analysis could obscure their impact, but also responds to the Commission's direction in SRM–01–0134 dated July 23, 2001, that, ''If there is a reasonable indication that a proposed change imposes costs disproportionate to the safety benefit attributable to that change, as part of the final rule package the Commission will perform an analysis of that proposed change in addition to the aggregate analysis of the entire rulemaking to determine whether this proposed change should be aggregated with the other proposed change for the purposes of the backfit analysis. That analysis will need to show that the individual change is integral to achieving the purpose of the rule, has costs that are justified in view of the benefits that would be provided or qualifies for one of the exceptions in 10 CFR § 50.109(a)(4).'' These results are described in Sections 4.1.4.1 and 4.4.2 of the draft regulatory analysis.

C. Dissaggregation of Worker Fatigue Provisions

Section 4.1.4.2 of the draft Regulatory Analysis summarizes the division of costs and savings of the fatigue management portions of the proposed rule, in comparison with the rest of the rule. The worker fatigue portions of the proposed rule are estimated to cost industry $585 million–$913 million net present value (using the 7 percent and 3 percent real discount rates, respectively), consisting of $19 million in one-time costs and $42 million in annual net costs. The NRC considers fatigue management to be an integral and necessary aspect of FFD. Fatigue currently is considered to be part of FFD under current § 26.10(a) and § 26.20(a)(2). However, the NRC included a summary of the costs associated with the proposed fatigue management requirements in the aggregate as a courtesy to stakeholders in Section 4.1.4.2 of the draft Regulatory Analysis.

XV. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors; licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM); corporations who obtain certificates of compliance or approved compliance plans under Part 76 involving formula quantities of SSNM; combined license holders; holders of manufacturing licenses; holders of construction permits; combined license holders and construction permit applicants with authorization to construct; and contractor/vendors (C/Vs) who implement FFD programs or program elements, to the extent that licensees and other entities rely upon those C/V FFD programs or program elements to meet the requirements of Part 26. Those above do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the Size Standards established by the Nuclear Regulatory Commission (10 CFR 2.810).

XVI. Backfit Analysis

The proposed rule would constitute backfitting as defined in 10 CFR 50.109(a)(1). The NRC has performed a backfit analysis, as described in § 50.109(c) [which applies to power reactors], § 70.76(b) [which applies to formula quantity strategic special nuclear material licensees], and § 76.76(b) [which applies to gaseous diffusion plants], consistent with the NRC's Regulatory Analysis Guidelines (RA Guidelines) in NUREG/BR–0058, Revision 4, dated September 2004. The Commission requests public comment on the draft Backfit Analysis. The draft Backfit Analysis is included in the draft Regulatory Analysis, which is available as discussed under the **ADDRESSES** heading. Single copies may be obtained from the contact listed under the **FOR FURTHER INFORMATION CONTACT** heading. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

A. Consideration of Fuel Fabrication Facilities and Gaseous Diffusion Plants

The backfit provision of 10 CFR 70.76 applies to currently operational fuel fabrication facilities. These facilities have been considered in the aggregate backfit analysis. The planned mixed-oxide fuel fabrication facility would also be licensed under Part 70, but has not yet submitted a Part 26 program description. Therefore, the consideration of the costs to the mixed-oxide fuel fabrication facility in the regulatory analysis is sufficient for consideration of the impacts to that facility. Although the backfit provision of 10 CFR 76.76 would apply to gaseous diffusion plants, there are no backfit impacts because the gaseous diffusion plants licensed by the NRC are not currently authorized to possess formula quantities of strategic special nuclear material.

B. Aggregate Backfit Analysis

The NRC performed an aggregate backfit analysis of all backfits consistent with Section 4.3.2 of the RA Guidelines. Because the changes associated with the proposed rule are interrelated and deal with a single subject area (FFD), the NRC followed its ordinary practice of assessing the backfitting implications in an aggregate manner, consistent with the RA Guidelines. The aggregate analysis is provided in Section 4.4.1 of the draft Part 26 Regulatory Analysis, which is available as discussed under the **ADDRESSES** heading. The aggregate analysis also includes a list of all changes that constitute backfits, in Exhibits 4–14 and 4–15 of the draft analysis. Exhibit 4–16 of the draft analysis also includes a list of all changes that were evaluated for potential cost implications, but were determined to not constitute backfits, as well as a list of the reasons those changes were determined to not constitute backfits. A summary of the results of the aggregate analysis follows.

The NRC determined the backfitting is justified under § 50.109(a)(3), § 70.76(a)(3) and § 76.76(a)(3) because: (1) There is a substantial increase in the overall level of protection afforded for the public health and safety or the common defense and security to be derived from the backfitting; and (2) the costs of implementation and the annual costs are justified in view of this increase. The estimated cost of implementation would be $21 million and the annual net costs would be $42 million, resulting in a net present value cost of $594 million–$927 million (using 7 percent and 3 percent real discount rates, respectively).

In determining that the substantial increase standard is met, the NRC considered safety benefits qualitatively. In this qualitative consideration, the NRC determined that the proposed FFD rule, considered in the aggregate, would constitute a substantial increase in protection to public health and safety by addressing the following six key areas that have been identified as posing recurring and, in some cases, significant problems with respect to the effectiveness, integrity, and efficiency of FFD programs at nuclear facilities.

1. Subversion of the detection/testing process;
2. Regulatory efficiency between 10 CFR Part 26 and other related Federal rules and guidelines;
3. Ineffective/unnecessary FFD requirements;
4. Ambiguous or imprecise regulatory language in 10 CFR Part 26;
5. Technical developments; and
6. FFD program integrity and protection of individual rights.

In addition to the six areas above, the NRC noted in its draft analysis a significant qualitative benefit in the management of worker fatigue for key personnel at nuclear power plants.

C. Screening Review for Disaggregation

The NRC also performed a screening review, consistent with Section 4.3.2 of the RA Guidelines, to determine if there are provisions constituting backfits whose costs are disproportionate to the benefits and whose inclusion in the aggregate analysis could obscure their impact. The NRC identified 15 proposed backfits with reasonable indications that the costs associated with the proposed backfit may be disproportional to the safety benefit attributable to the change. The NRC determined that all of the 15 proposed backfits were necessary to meet the objectives of the rule. Therefore, the staff did not disaggregate any of those individual provisions and perform a separate backfit analysis for each provision. A detailed discussion of the screening review, including the reasons why each of the 15 proposed backfits were determined to be necessary to meet the objectives of the proposed rule is described in Section 4.4.2 of the draft Regulatory Analysis.

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List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to revise 10 CFR Part 26 in its entirety to read as follows:

PART 26—FITNESS FOR DUTY PROGRAMS

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Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

Subpart A—Administrative Provisions

§ 26.1 Purpose.

This part prescribes requirements and standards for the establishment, implementation, and maintenance of fitness-for-duty (FFD) programs.

§ 26.3 Scope.

(a) The regulations in this part apply to licensees who are authorized to operate a nuclear power reactor (under § 50.57 of this chapter) and holders of a combined license after the Commission has made the finding under § 52.103 of this chapter.

(b) The regulations in this part, except those contained in Subpart I, also apply to licensees who are authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM) under Part 70 of this chapter.

(c) In addition, the regulations in this part, except those contained in Subpart I, apply to a corporation, firm, partnership, limited liability company, association, or other organization that obtains a certificate of compliance or an approved compliance plan under Part 76 of this chapter, only if the entity elects to engage in activities involving formula quantities of SSNM. When applicable, the requirements apply only to the entity and personnel specified in § 26.25(a)(3).

(d) The regulations in this part also apply to contractor/vendors (C/Vs) who implement FFD programs or program elements, to the extent that licensees and other entities rely upon those C/V FFD programs or program elements to meet the requirements of this part.

(e) Combined license holders (under Part 52 of this chapter) before the Commission has made the finding under § 52.103 of this chapter, combined license applicants who have received authorization to construct under § 50.10(e)(3), construction permit holders (under Part 50 of this chapter), construction permit applicants who have received authorization to construct under § 50.10(e)(3), and holders of manufacturing licenses (under Part 52 of this chapter) shall—

(1) Comply with §§ 26.23, 26.41, and 26.189;

(2) Implement a drug and alcohol testing program, including random testing; and

(3) Make provisions for employee assistance programs, imposition of sanctions, procedures for the objective and impartial review of authorization decisions, protection of information, and recordkeeping.

(f) The regulations in this part do not apply to either spent fuel storage facility licensees or non-power reactor licensees who possess, use, or transport formula quantities of irradiated SSNM because these materials are exempt from the Category I physical protection requirements set forth in 10 CFR 73.6.

§ 26.5 Definitions.

Acute fatigue means fatigue from causes (e.g., restricted sleep, sustained wakefulness, task demands) occurring within the past 24 hours.

Adulterated specimen means a urine specimen that contains a substance that is not a normal constituent, or one that contains an endogenous substance at a concentration that is not a normal physiological concentration.

Alertness means the ability to remain awake and sustain attention.

Aliquot means a portion of a specimen that is used for testing. It is taken as a sample representing the whole specimen.

Analytical run means the process of testing a group of urine specimens for validity or for the presence of drugs and/or drug metabolites. For the purposes of defining the periods within which performance testing must be conducted by licensee testing facilities and HHS-certified laboratories who continuously process specimens, an analytical run is defined as no more than an 8-hour period. For a facility that analyzes specimens in batches, an analytical run is defined as a group of specimens that are handled and tested together.

Best effort means documented actions that a licensee or other entity who is subject to this part takes to obtain suitable inquiry and employment information in order to determine whether an individual may be authorized to have the types of access or to perform the activities specified in § 26.25(a), when the primary source of information refuses or indicates an inability or unwillingness to provide the information within 3 business days of the request and the licensee or other entity relies upon a secondary source to meet the requirement.

Blood alcohol concentration (BAC) means the mass of alcohol in a volume of blood.

Calibrator means a solution of known concentration which is used to define expected outcomes of a measurement procedure or to compare the response obtained with the response of a test specimen/sample. The concentration of the analyte of interest in the calibrator is known within limits ascertained during its preparation. Calibrators may be used to establish a cutoff concentration and/or a calibration curve over a range of interest.

Category IA material means SSNM that is directly usable in the manufacture of a nuclear explosive device, except if the material meets any of the following criteria:

(1) The dimensions are large enough (at least 2 meters in one dimension, greater than 1 meter in each of two dimensions, or greater than 25 cm in each of three dimensions) to preclude hiding the item on an individual;

(2) The total weight of an encapsulated item of SSNM is such that it cannot be carried inconspicuously by one person (i.e., at least 50 kilograms gross weight); or

(3) The quantity of SSNM (less than 0.05 formula kilograms) in each container requires protracted diversions to accumulate 5 formula kilograms.

Chain of custody means procedures to account for the integrity of each specimen or aliquot by tracking its handling and storage from the point of specimen collection to final disposition of the specimen and its aliquots. ''Chain of custody'' and ''custody and control'' are synonymous and may be used interchangeably.

Circadian variation in alertness and performance means the increases and decreases in alertness and cognitive/motor functioning caused by human physiological processes (e.g., body temperature, release of hormones) that vary on an approximately 24-hour cycle.

Collection site means a designated place where individuals present themselves for the purpose of providing a specimen of their urine, oral fluids, and/or breath to be analyzed for the presence of drugs or alcohol.

Collector means a person who is trained in the collection procedures of this part, instructs and assists a specimen donor at a collection site, and receives and makes an initial examination of the specimen(s) provided by the donor.

Commission means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

Confirmatory drug or alcohol test means a second analytical procedure to identify the presence of alcohol or a specific drug or drug metabolite in a specimen. The purpose of a confirmatory test is to ensure the reliability and accuracy of an initial test result.

Confirmatory validity test means a second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed test result means a test result that demonstrates that an individual has used drugs or alcohol in violation of the requirements of this part or has attempted to subvert the testing process by submitting an adulterated or substituted urine specimen. For drugs, adulterants, and substituted specimens, a confirmed test result is determined by the Medical Review Officer (MRO), after discussion with the donor subsequent to the MRO's receipt of a positive confirmatory drug test result from the HHS-certified laboratory and/or a non-negative confirmatory validity test result from the HHS-certified laboratory for that donor. For alcohol, a confirmed test result is based upon a positive confirmatory alcohol test result from an evidential breath testing device without MRO review of the test result.

Contractor/vendor (C/V) means any company, or any individual not employed by a licensee or other entity who is subject to this part, who is providing work or services to a licensee or other entity subject to this part, either by contract, purchase order, verbal agreement, or other arrangement.

Control means a sample used to monitor the status of an analysis to maintain its performance within predefined limits.

Cumulative fatigue means the increase in fatigue over consecutive sleep-wake periods resulting from inadequate rest.

Cutoff level means the concentration established for designating and reporting a test result as non-negative.

Dilute specimen means a urine specimen with creatinine and specific gravity concentrations that are lower than expected for human urine.

Directing means the exercise of control over a work activity by an individual who is directly involved, capable of making technical decisions, and ultimately responsible for the correct performance of that work activity.

Donor means the individual from whom a specimen is collected.

Employment action means a change in job responsibilities or removal from a job, or the mandated implementation of a plan for substance abuse treatment in order to avoid a change in or removal from a job, because of the individual's use of drugs or alcohol.

Fatigue means the degradation in an individual's cognitive and motor functioning resulting from inadequate rest.

Formula quantity means strategic special nuclear material in any combination in a quantity of 5000 grams or more computed by the formula, grams=(grams contained U–235)+2.5 (grams U–233+grams plutonium). This class of material is sometimes referred to as a Category I quantity of material.

HHS-certified laboratory means a laboratory that is certified to perform urine drug testing under the most recent version of the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs. Information concerning the current certification status of laboratories is available from: the Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Room 815, 5600 Fishers Lane, Rockwall 2 Bldg., Rockville, Maryland 20857.

Illegal drug means, for the purposes of this regulation, any drug that is included in Schedules I–V of section 202 of the Controlled Substances Act [21 U.S.C. 812], but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

Increase in threat condition means an increase in the protective measure level as promulgated by an NRC Advisory.

Initial drug test means a test to differentiate ''negative'' specimens from those that require confirmatory drug testing.

Initial validity test means a first test used to determine whether a specimen is adulterated, diluted, or substituted, and may require confirmatory validity testing.

Invalid result means the result reported by an HHS-certified laboratory for a specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, contains inconsistent physiological constituents, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

Legal action means a formal action taken by a law enforcement authority or court of law, including an arrest, an indictment, the filing of charges, a conviction, or the mandated implementation of a plan for substance abuse treatment in order to avoid a permanent record of an arrest or conviction, in response to any of the following activities:

(1) The use, sale, or possession of illegal drugs;

(2) The abuse of legal drugs or alcohol; or

(3) The refusal to take a drug or alcohol test.

Licensee testing facility means a drug testing facility that is operated by a licensee or other entity who is subject to this part to perform initial tests of urine specimens.

Limit of detection (LOD) means the lowest concentration of an analyte that an analytical procedure can reliably detect, which could be significantly lower than the established cutoff levels.

Limit of quantitation (LOQ) means the lowest concentration of an analyte at which the concentration of the analyte can be accurately determined under defined conditions.

Medical Review Officer (MRO) means a licensed physician who is responsible for receiving laboratory results generated by a Part 26 drug testing program and who has the appropriate medical training to properly interpret and evaluate an individual's non-negative test results together with his or her medical history and any other relevant biomedical information.

Nominal means the limited flexibility that is permitted in meeting a scheduled due date for completing a recurrent activity that is required under this part, such as the nominal 12-month frequency required for FFD refresher training in § 26.29(c)(2) and the nominal 12-month frequency required for certain audits in § 26.41(c)(1). Completing a recurrent activity at a nominal frequency means that the activity may be completed within a period that is 25 percent longer or shorter than the period required in this part. The next scheduled due date would be no later than the current scheduled due date plus the required frequency for completing the activity.

Non-negative test result means a report by the licensee testing facility or the HHS-certified laboratory that a urine specimen meets the criteria for substitution established in this part or is positive for a drug, drug metabolite, or adulterant at a concentration equal to or greater than the designated cutoff levels, or the results of a test of oral fluids or breath that indicate the presence of alcohol at a concentration equal to or greater than the cutoff levels established by the FFD program or as specified in this part. A non-negative test result may be obtained from any initial or confirmatory drug, validity, or alcohol test.

Other entity means any corporation, firm, partnership, limited liability company, association, C/V, or other organization who is subject to this part under § 26.3(c) and (d), but is not licensed by the NRC.

Oxidizing adulterant means a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drugs or drug metabolites, or a substance that affects the reagents in either the initial or confirmatory drug test. Examples of these agents include, but are not limited to, nitrites, pyridinium chlorochromate, chromium (VI), bleach, iodine/iodide, halogens, peroxidase, and peroxide.

Potentially disqualifying FFD information means information demonstrating that an individual has—

(1) Violated a licensee's or other entity's FFD policy;

(2) Had authorization denied or terminated unfavorably under §§ 26.61(d), 26.63(d), 26.65(h), 26.67(c), 26.69(f), or 26.75(b) through (e);

(3) Used, sold, or possessed illegal drugs;

(4) Abused legal drugs or alcohol;

(5) Subverted or attempted to subvert a drug or alcohol testing program;

(6) Refused to take a drug or alcohol test;

(7) Been subjected to a plan for substance abuse treatment (except for self-referral); or

(8) Had legal action or employment action, as defined in this section, taken for alcohol or drug use.

Protected area has the same meaning as in § 73.2(g) of this chapter, an area encompassed by physical barriers and to which access is controlled.

Quality control sample means a sample used to evaluate whether an analytical procedure is operating within predefined tolerance limits. Calibrators, controls, negative samples, and blind samples are collectively referred to as ''quality control samples'' and each is individually referred to as a ''sample.''

Reviewing official means the designated licensee or other entity's employee who is responsible for reviewing and evaluating any potentially disqualifying FFD information about an individual, including, but not limited to, the results of a determination of fitness, as defined in § 26.189, in order to determine whether the individual may be granted or maintain authorization.

Standard means a reference material of known purity or a solution containing a reference material at a known concentration.

Strategic special nuclear material (SSNM) means uranium-235 (contained in uranium enriched to 20 percent or more in the U–235 isotope), uranium-233, or plutonium.

Substance abuse means the use, sale, or possession of illegal drugs, or the abuse of prescription and over-the-counter drugs, or the abuse of alcohol.

Substituted specimen means a specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human physiology.

Subversion and subvert the testing process mean a willful act to avoid being tested or to bring about an inaccurate drug or alcohol test result for oneself or others at any stage of the testing process (including selection and notification of individuals for testing, specimen collection, specimen analysis, test result reporting), and adulterating, substituting, or otherwise causing a specimen to provide an inaccurate test result.

Transporter means a general licensee, under 10 CFR 70.20(a), who is authorized to possess formula quantities of SSNM, in the regular course of carriage for another or storage incident thereto, and includes the driver or operator of any conveyance, and the accompanying guards or escorts.

Validity screening test means the use of a non-instrumented testing device to determine the need for initial validity testing of a urine specimen.

§ 26.7 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 26.8 Information collection requirements: OMB approval.

(a) The NRC has submitted the information collection requirements contained in this part for approval by the Office of Management and Budget (OMB), as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC 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. OMB has approved the information collection requirements contained in this part under control number 3150–0146.

(b) The approved information collection requirements contained in this part appear in §§ 26.9, 26.27, 26.29, 26.31, 26.33, 26.35, 26.37, 26.39, 26.41, 26.55, 26.57, 26.59, 26.61, 26.63, 26.65, 26.69, 26.75, 26.77, 26.85, 26.87, 26.91, 26.93, 26.95, 26.97, 26.99, 26.101, 26.103, 26.107, 26.109, 26.111, 26.113, 26.115, 26.117, 26.119, 26.125, 26.127, 26.129, 26.135, 26.137, 26.139, 26.153, 26.155, 26.157, 26.159, 26.163, 26.165, 26.167, 26.169, 26.183, 26.185, 26.187, 26.189, 26.197, 26.199, 26.201, 26.211, 26.213, 26.215, 26.217, 26.219, and 26.221.

§ 26.9 Specific exemptions.

Upon application of any interested person or upon its own initiative, the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

§ 26.11 Communications.

Except where otherwise specified in this part, all communications, applications, and reports concerning the regulations in this part must be sent either by mail addressed: ATTN: NRC Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland, between the hours of 8:15 a.m. and 4 p.m. eastern time; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD–ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at *http://www.nrc.gov/site-help/eie.html*, by calling (301) 415–6030, by e-mail at *EIE@nrc.gov,* or by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information. Copies of all communications must be sent to the appropriate regional office and resident inspector (addresses for the NRC Regional Offices are listed in Appendix D to Part 20 of this chapter).

Subpart B—Program Elements

§ 26.21 Fitness-for-duty program.

Licensees and other entities who are subject to this part must establish, implement, and maintain FFD programs in accordance with the applicable requirements of this part. Fitness-for-duty programs subject to this part may rely upon the FFD program or program elements of a C/V, as defined in § 26.5, if the C/V's FFD program or program elements meet the applicable requirements of this part.

§ 26.23 Performance objectives.

Fitness-for-duty programs must—

(a) Provide reasonable assurance that individuals who are subject to this part are trustworthy and reliable as demonstrated by the avoidance of substance abuse;

(b) Provide reasonable assurance that individuals who are subject to this part are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

(c) Provide reasonable measures for the early detection of individuals who are not fit to perform the job duties that require them to be subject to this part;

(d) Provide reasonable assurance that the workplaces subject to this part are free from the presence and effects of illegal drugs and alcohol; and

(e) Provide reasonable assurance that the effects of fatigue and degraded alertness on individuals' abilities to safely and competently perform their duties are managed commensurate with maintaining public health and safety.

§ 26.25 Individuals subject to the fitness-for-duty program.

(a) Individuals whose job duties require them to have the following types of access, or to perform the following activities are subject to the FFD program:

(1) All persons who are granted unescorted access to nuclear power plant protected areas;

(2) All persons who are required by a licensee to physically report to the licensee's Technical Support Center or Emergency Operations Facility, in accordance with licensee emergency plans and procedures;

(3) SSNM licensee and transporter personnel who—

(i) Are granted unescorted access to Category IA Material;

(ii) Create or have access to procedures or records for safeguarding SSNM;

(iii) Measure Category IA Material;

(iv) Transport or escort Category IA Material; or

(v) Guard Category IA Material;

(4) All FFD program personnel who are involved in the day-to-day operations of the program, as defined by the licensee's or other entity's procedures, and who—

(i) Can link test results with the individual who was tested before an FFD policy violation determination is made, including, but not limited to the MRO;

(ii) Make determinations of fitness;

(iii) Make authorization decisions;

(iv) Are involved in selecting or notifying individuals for testing; or

(v) Are involved in the collection or on-site testing of specimens.

(b) The following individuals are not subject to the FFD program:

(1) Individuals who are not employed by the licensee's or other entity's FFD program, who do not routinely provide FFD program services, and whose normal workplace is not at the licensee's or other entity's facility, but who may be called upon to provide an FFD program service, including, but not limited to, collecting specimens for drug and alcohol testing, performing behavioral observation, or providing input to a determination of fitness. Such individuals may include, but are not limited to, hospital, employee assistance program (EAP) or substance abuse treatment facility personnel, or other medical professionals;

(2) NRC employees, law enforcement personnel, or offsite emergency fire and medical response personnel while responding on site; and

(3) SSNM transporter personnel who are subject to U.S. Department of Transportation drug and alcohol FFD programs that require random testing for drugs and alcohol.

(c) Individuals who are subject to this part and who are also subject to a program regulated by another Federal agency or State need be covered by only those elements of a Part 26 FFD program that are not included in the Federal agency or State program, as long as all of the following conditions are met:

(1) The individuals are subject to pre-access (or pre-employment), random, for-cause, and post-event testing for the drugs and drug metabolites specified in § 26.31(d)(1) at or below the cutoff levels specified in § 26.163(a)(1) for initial drug testing and in § 26.163(b)(1) for confirmatory drug testing;

(2) The individuals are subject to pre-access (or pre-employment), random, for-cause, and post-event testing for alcohol at or below the cutoff levels specified in § 26.103(a) and breath specimens are subject to confirmatory testing, if required, with an evidential breath testing device that meets the requirements specified in § 26.91;

(3) Urine specimens are tested for validity and the presence of drugs and drug metabolites at a laboratory certified by HHS;

(4) Training is provided to address the knowledge and abilities listed in § 26.29(a)(1) through (10);

(5) An impartial and objective procedure is provided for the review and reversal of any findings of an FFD policy violation; and

(6) Provisions are made to ensure that the testing agency or organization notifies the licensee or other entity granting authorization of any FFD policy violation.

(d) Individuals who have applied for authorization to have the types of access or perform the activities described in paragraph (a) of this section shall be subject to the applicable requirements of this part and provided with the applicable protections of this part.

§ 26.27 Written policy and procedures.

(a) *General.* Each licensee and other entity who is subject to this part shall establish, implement, and maintain written policies and procedures to meet the general performance objectives and applicable requirements of this part.

(b) *Policy.* The FFD policy statement must be clear, concise, and readily available, in its most current form, to all individuals who are subject to the policy. Methods of making the statement readily available include, but are not limited to, posting the policy in multiple work areas, providing individuals with brochures, or allowing individuals to print the policy from a computer. The policy statement must be written in sufficient detail to provide affected individuals with information on what is expected of them and what consequences may result from a lack of adherence to the policy. At a minimum, the written policy statement must—

(1) Describe the consequences of the following actions:

(i) The use, sale, or possession of illegal drugs on or off site;

(ii) The abuse of legal drugs and alcohol; and

(iii) The misuse of prescription and over-the-counter drugs;

(2) Describe the requirement that individuals who are notified that they have been selected for random testing must report to the collection site within the time period specified by the licensee or other entity;

(3) Describe the consequences of refusals to provide a specimen for testing, as well as the consequences of subverting or attempting to subvert the testing process;

(4) Prohibit the consumption of alcohol, at a minimum—

(i) Within an abstinence period of 5 hours preceding the individual's arrival at the licensee's or other entity's facility, except as permitted in § 26.27(c)(3); and

(ii) During the period of any tour of duty;

(5) Convey that abstinence from alcohol for the 5 hours preceding any scheduled tour of duty is considered to be a minimum that is necessary, but may not be sufficient, to ensure that the individual is fit for duty;

(6) Address other factors that could affect FFD, such as mental stress, fatigue, or illness, and the use of prescription and over-the-counter medications that could cause impairment;

(7) Provide a description of any program that is available to individuals who are seeking assistance in dealing with drug, alcohol, fatigue, or other problems that could adversely affect an individual's ability to safely and competently perform the job duties that require an individual to be subject to this part;

(8) Describe the consequences of violating the policy;

(9) Describe the individual's responsibility to report legal actions, as defined in § 26.5;

(10) Describe the responsibilities of managers, supervisors, and escorts to report FFD concerns; and

(11) Describe the individual's responsibility to report FFD concerns.

(c) *Procedures.* Each licensee and other entity who is subject to this part shall prepare, implement, and maintain written procedures that describe the methods to be used in implementing the FFD policy and the requirements of this part. The procedures must—

(1) Describe the methods and techniques to be used in testing for drugs and alcohol, including procedures for protecting the privacy and due process rights of an individual who provides a specimen, procedures for protecting the integrity of the specimen, and procedures used to ensure that the test results are valid and attributable to the correct individual;

(2) Describe immediate and followup actions that will be taken, and the procedures to be used, in those cases in which individuals who are subject to this part are determined to have—

(i) Been involved in the use, sale, or possession of illegal drugs;

(ii) Consumed alcohol to excess before the mandatory pre-work abstinence period, during the mandatory pre-work abstinence period, or while on duty, as determined by a test that measures BAC;

(iii) Attempted to subvert the testing process by adulterating or diluting specimens (in vivo or in vitro), substituting specimens, or by any other means;

(iv) Refused to provide a specimen for analysis; or

(v) Had legal action taken relating to drug or alcohol use, as defined in § 26.5;

(3) Describe the process that the licensee or other entity will use to ensure that individuals who are called in to perform an unscheduled working tour are fit for duty. Consumption of alcohol during the 5-hour abstinence period required in paragraph (b)(4)(i) of this section may not by itself preclude a licensee or other entity from using individuals who are needed to respond to an emergency. At a minimum—

(i) The procedure must require the individual who is called in to state whether the individual considers himself or herself fit for duty and whether he or she has consumed alcohol within the pre-duty abstinence period stated in the policy;

(ii) If the individual has consumed alcohol within this period and the individual is called in, the procedure must—

(A) Require a determination of fitness by breath alcohol analysis or other means;

(B) Require the establishment of controls and conditions under which the individual who has been called in can perform work, if necessary; and

(C) State that no sanctions may be imposed on an individual who is called in to perform an unscheduled working tour and has consumed alcohol within the pre-duty abstinence period stated in the policy.

(iii) If the individual reports that he or she considers himself or herself to be unfit for duty for other reasons, including illness, fatigue, or other potentially impairing conditions, and the individual is called in, the procedure must require the establishment of controls and conditions under which the individual can perform work, if necessary;

(4) Describe the process to be followed if an individual's behavior raises a concern regarding the possible use, sale, or possession of illegal drugs on or off site; the possible possession or consumption of alcohol on site; or impairment from any cause which in any way could adversely affect the individual's ability to safely and competently perform his or her duties. The procedure must require that individuals who have an FFD concern about another individual's behavior shall contact the personnel designated in the procedures to report the concern.

(d) *Review.* The NRC may, at any time, review the written policy and procedures to assure that they meet the performance objectives and requirements of this part.

§ 26.29 Training.

(a) *Training content.* Licensees and other entities shall ensure that individuals who are subject to this part have the following knowledge and abilities (KAs):

(1) Knowledge of the policy and procedures that apply to the individual, the methods that will be used to implement them, and the consequences of violating the policy and procedures;

(2) Knowledge of the individual's role and responsibilities under the FFD program;

(3) Knowledge of the roles and responsibilities of others, such as the MRO and the human resources, FFD, and EAP staffs;

(4) Knowledge of the EAP services available to the individual;

(5) Knowledge of the personal and public health and safety hazards associated with abuse of illegal and legal drugs and alcohol;

(6) Knowledge of the potential adverse effects on job performance of prescription and over-the-counter drugs, alcohol, dietary factors, illness, mental stress, and fatigue;

(7) Knowledge of the prescription and over-the-counter drugs and dietary factors that have the potential to affect drug and alcohol test results;

(8) Ability to recognize illegal drugs and indications of the illegal use, sale, or possession of drugs;

(9) Ability to observe and detect performance degradation, indications of impairment, or behavioral changes; and

(10) Knowledge of the individual's responsibility to report an FFD concern and the ability to initiate appropriate actions, including referrals to the EAP and person(s) designated by the licensee or other entity to receive FFD concerns.

(b) *Comprehensive examination.* Individuals who are subject to this part shall demonstrate the successful completion of training by passing a comprehensive examination that addresses the KAs in paragraph (a) of this section. The examination must include a comprehensive random sampling of all KAs with questions that test each KA, including at least one question for each KA. The minimum passing score required must be 80 percent. Remedial training and testing are required for individuals who fail to answer correctly at least 80 percent of the test questions. The examination may be administered using a variety of media, including, but not limited to, hard-copy test booklets with separate answer sheets or computer-based questions.

(c) *Training administration.* Licensees and other entities shall ensure that individuals who are subject to this part are trained, as follows:

(1) Training must be completed before the licensee or other entity grants initial authorization, as defined in § 26.55, and must be current before the licensee or other entity grants an authorization update, as defined in § 26.57, or authorization reinstatement, as defined in § 26.59;

(2) Individuals shall complete refresher training on a nominal 12-month frequency, or more frequently where the need is indicated. Individuals who pass a comprehensive annual examination that meets the requirements in paragraph (b) of this section may forgo the refresher training; and

(3) Initial and refresher training may be delivered using a variety of media (including, but not limited to, classroom lectures, required reading, video, or computer-based training systems). The licensee or other entity shall monitor the completion of training and provide a qualified instructor or designated subject matter expert to answer questions during the course of training.

(d) *Acceptance of training.* Licensees and other entities may accept training of individuals who have been subject to another Part 26 program and who have, within the past 12 months, either had initial or refresher training, or have successfully passed a comprehensive examination that meets the requirements in paragraph (b) of this section.

§ 26.31 Drug and alcohol testing.

(a) *General.* To provide a means to deter and detect substance abuse, licensees and other entities who are subject to this part shall implement drug and alcohol testing programs for individuals who are subject to this part.

(b) *Assuring the honesty and integrity of FFD program personnel.* (1) Licensees and other entities who are subject to this part shall carefully select and monitor FFD program personnel, as defined in § 26.25(a)(4), based upon the highest standards for honesty and integrity, and shall implement measures to ensure that these standards are maintained. The measures must ensure that the honesty and integrity of these individuals are not compromised and that FFD program personnel are not subject to influence attempts attributable to personal relationships with any individuals who are subject to testing, an undetected or untreated substance abuse problem, or other factors. At a minimum, these measures must include the following considerations:

(i) Licensees and other entities shall complete appropriate background investigations, credit and criminal history checks, and psychological assessments of FFD program personnel before assignment to tasks directly associated with administration of the FFD program. The background investigations, credit and criminal history checks, and psychological assessments conducted in order to grant unescorted access authorization to individuals under a nuclear power plant licensee's access authorization program are acceptable to meet the requirements of this paragraph. The credit and criminal history checks and psychological assessments must be updated nominally every 5 years;

(ii) Individuals who have personal relationships with the individual being tested may not perform any assessment or evaluation procedures, including, but not limited to, determinations of fitness. These personal relationships may include, but are not limited to, supervisors, coworkers within the same work group, and relatives of the donor.

(iii) Except if a directly observed collection is required, a collector who has a personal relationship with the donor may collect specimens from the donor only if the integrity of specimen collections in these instances is assured through the following means:

(A) The collection must be monitored by an individual who does not have a personal relationship with the donor and who is designated by the licensee or other entity for this purpose, including, but not limited to, security force or quality assurance personnel; and

(B) Individuals who are designated to monitor collections in these instances shall be trained to monitor specimen collections and the preparation of specimens for transfer or shipping in accordance with the requirements of this part;

(iv) If a specimen must be collected under direct observation, the collector or an individual who serves as the observer, as permitted under § 26.115(e), may not have a personal relationship with the donor; and

(v) FFD program personnel shall be subject to a behavioral observation program designed to assure that they continue to meet the highest standards of honesty and integrity. When an MRO and MRO staff are on site at a licensee's or other entity's facility, the MRO and MRO staff shall be subject to behavioral observation.

(2) Licensees and other entities who are subject to this part may rely upon a local hospital or other organization that meets the requirements of 49 CFR Part 40, ''Procedures for Department of Transportation Workplace Drug and Alcohol Testing Programs'' (65 FR 41944; August 9, 2001) to collect specimens for drug and alcohol testing from the FFD program personnel listed in § 26.25(a)(4).

(c) *Conditions for testing.* Licensees and other entities shall administer drug and alcohol tests to individuals who are subject to this part under the following conditions:

(1) *Pre-access.* In order to grant initial, updated, or reinstated authorization to an individual, as specified in subpart C of this part;

(2) *For cause.* In response to an individual's observed behavior or physical condition indicating possible substance abuse or after receiving credible information that an individual is engaging in substance abuse, as defined in § 26.5;

(3) *Post-event.* As soon as practical after an event involving a human error that was committed by an individual who is subject to this part, where the human error may have caused or contributed to the event. The licensee or other entity shall test the individual(s) who committed the error(s), and need not test individuals who were affected by the event but whose actions likely did not cause or contribute to the event. The individual(s) who committed the human error(s) shall be tested if the event resulted in—

(i) A significant illness or personal injury to the individual to be tested or another individual, which within 4 hours after the event is recordable under the Department of Labor standards contained in 29 CFR 1907.4, and subsequent amendments thereto, and results in death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or other significant illness or injury as diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness;

(ii) A radiation exposure or release of radioactivity in excess of regulatory limits; or

(iii) Actual or potential substantial degradations of the level of safety of the plant;

(4) *Followup.* As part of a followup plan to verify an individual's continued abstinence from substance abuse; and

(5) Random. On a statistically random and unannounced basis, so that all individuals in the population subject to testing have an equal probability of being selected and tested.

(d) *General requirements for drug and alcohol testing.* (1) *Substances tested.* At a minimum, licensees and other entities shall test for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol.

(i) In addition, licensees and other entities may consult with local law enforcement authorities, hospitals, and

drug counseling services to determine whether other drugs with abuse potential are being used in the geographical locale of the facility and by the local workforce that may not be detected in the panel of drugs and drug metabolites specified in paragraph (d)(1) of this section.

(A) When appropriate, the licensee or other entity may add other drugs identified in accordance with paragraph (d)(1)(i) of this section to the panel of substances for testing, but only if the additional drugs are listed in Schedules I–V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(B) The licensee or other entity shall establish appropriate cutoff limits for these substances.

(C) The licensee or other entity shall establish rigorous testing procedures for these substances that are consistent with the intent of this part, so that the MRO can evaluate the use of these substances.

(D) The licensee or other entity may not conduct an analysis for any drug or drug metabolites except those identified in paragraph (d)(1) of this section unless the assay and cutoff levels to be used are certified in writing as scientifically sound and legally defensible by an independent, qualified forensic toxicologist. The forensic toxicologist may not be an employee of the licensee or entity, and shall either be a Diplomate of the American Board of Forensic Toxicology or currently hold, or would be eligible to hold, the position of Responsible Person at an HHS-certified laboratory, as specified in § 26.155(a) of this part. All new assays and cutoff levels must be properly validated in accordance with established forensic toxicological standards before implementation. Certification of the assay and cutoff levels is not required if the HHS Guidelines are revised to authorize use of the assay in testing for the additional drug or drug metabolites and the licensee or other entity uses the cutoff levels established in the HHS Guidelines for the drug or drug metabolites, or if the licensee or other entity received written approval of the NRC to test for the additional drug or drug metabolites before [Insert implementation date of final rule].

(ii) When conducting post-event, followup, and for-cause testing, as defined in § 26.31(c), licensees and other entities may test for any drugs listed on Schedules I–V of section 202 of the Controlled Substances Act [21 U.S.C. 812] that an individual is suspected of having abused, and may consider any drugs or metabolites so detected when determining appropriate action under Subpart D of this part. If the drug or metabolites for which testing will be performed under this paragraph are not included in the FFD program's drug panel, the assay and cutoff levels to be used in testing for the additional drugs must be certified by a forensic toxicologist in accordance with paragraph (d)(1)(i)(D) of this section. Test results that fall below the established cutoff levels may not be considered when determining appropriate action under Subpart D of this part.

(2) *Random testing.* Random testing must—

(i) Be administered in a manner that provides reasonable assurance that individuals are unable to predict the time periods during which specimens will be collected. At a minimum, the FFD program shall—

(A) Take reasonable steps to either conceal from the workforce that collections will be performed during a scheduled collection period or create the appearance that specimens are being collected during a portion of each day on at least 4 days in each calendar week at each site; and

(B) Collect specimens on an unpredictable schedule, including weekends, backshifts, and holidays, and at various times during a shift;

(ii) At a minimum, be administered by the FFD program on a nominal weekly frequency;

(iii) Require individuals who are selected for random testing to report to the collection site as soon as reasonably practicable after notification, within the time period specified in the FFD program policy;

(iv) Ensure that all individuals in the population subject to testing have an equal probability of being selected and tested. Individuals who are off site when selected for testing, and not reasonably available for testing when selected, shall be tested at the earliest reasonable and practical opportunity when both the donor and collectors are available to collect specimens for testing and without prior notification to the individual that he or she has been selected for testing;

(v) Provide that an individual completing a test is immediately eligible for another unannounced test; and

(vi) Ensure that the sampling process used to select individuals for random testing provides that the number of random tests performed annually is equal to at least 50 percent of the population that is subject to the FFD program.

(3) *Drug testing.* (i) Testing of urine specimens for drugs, except initial tests performed by licensee testing facilities under paragraph (d)(3)(ii) of this section, must be performed in a laboratory that is certified by HHS for that purpose, consistent with its standards and procedures for certification. Specimens sent to HHS-certified laboratories must be subject to initial validity and drug testing by the laboratory. Specimens that yield non-negative initial validity or drug test results must be subject to confirmatory testing by the laboratory, except for invalid specimens that cannot be tested. Licensees and other entities shall ensure that laboratories report results for all specimens sent for testing, including blind performance test samples.

(ii) Licensees and other entities may conduct validity screening and initial validity and drug tests of urine aliquots to determine which specimens are valid and negative and need no further testing, provided that the licensee's or other entity's staff possesses the necessary training and skills for the tasks assigned, the staff's qualifications are documented, and adequate quality controls for the testing are implemented.

(iii) At a minimum, licensees and other entities shall apply the cutoff levels specified in § 26.163(a)(1) for initial drug testing and in § 26.163(b)(1) for confirmatory drug testing. At their discretion, licensees and other entities may implement programs with lower cutoff levels for drug testing.

(A) If a licensee or other entity implements lower cutoff levels, and the MRO determines that an individual has violated the FFD policy using the licensee's or other entity's more stringent cutoff levels, the individual shall be subject to all management actions and sanctions required by the licensee's or other entity's FFD policy and this part, as if the individual had a confirmed positive drug test result using the cutoff levels specified in this part. The licensee or other entity shall document the more stringent cutoff levels in any written policies and procedures in which cutoff levels for drug testing are described.

(B) The licensee or other entity shall uniformly apply the cutoff levels listed in § 26.163(a)(1) for initial drug testing and in § 26.163(b)(1) for confirmatory drug testing, or any more stringent cutoff levels implemented by the FFD program, to all tests performed under this part and equally to all individuals who are tested under this part, except as permitted in §§ 26.31(d)(1)(ii) and 26.163(a)(2).

(C) In addition, the scientific and technical suitability of any more stringent cutoff levels must be evaluated and certified, in writing, by a forensic toxicologist who meets the requirements set forth in § 26.31(d)(1)(i)(D).

Certification of the more stringent cutoff levels is not required if the HHS Guidelines are revised to lower the cutoff levels for the drug or drug metabolites in Federal workplace drug testing programs and the licensee or other entity implements the cutoff levels published in the HHS Guidelines, or if the licensee or other entity received written approval of the NRC to test for lower cutoff levels before [Insert implementation date of final rule].

(4) *Alcohol testing.* Initial tests for alcohol must be administered by breath or oral fluids analysis using alcohol analysis devices that meet the requirements of § 26.91(a). If the initial test shows a BAC of 0.02 percent or greater, a confirmatory test for alcohol must be performed. The confirmatory test must be performed with an evidential breath testing device that meets the requirements of § 26.91(b).

(5) *Medical conditions.* (i) If an individual has a medical condition that makes collection of breath, oral fluids, or urine specimens difficult or hazardous, the MRO may authorize an alternative evaluation process, tailored to the individual case, to meet the requirements of this part for drug and alcohol testing. The alternative process must include measures to prevent subversion and achieve results that are comparable to those produced by urinalysis for drugs and breath analysis for alcohol.

(ii) If an individual requires medical attention, including, but not limited to, an injured worker in an emergency medical facility who is required to have a post-event test, treatment may not be delayed to conduct drug and alcohol testing.

(6) *Limitations of testing.* Specimens collected under NRC regulations may only be designated or approved for testing as described in this part and may not be used to conduct any other analysis or test without the written permission of the donor. Analyses and tests that may not be conducted include, but are not limited to, DNA testing, serological typing, or any other medical or genetic test used for diagnostic or specimen identification purposes.

§ 26.33 Behavioral observation.

Licensees and other entities who are subject to this part shall ensure that the individuals listed in § 26.25(a) and (c), if necessary, are subject to behavioral observation. Behavioral observation must be performed by individuals who are trained in accordance with § 26.29 to detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, may constitute a risk to the health and safety of the public. Individuals who are subject to this part shall report any FFD concerns about other individuals who are subject to this part to the personnel designated in the FFD policy.

§ 26.35 Employee assistance programs.

(a) Each licensee and other entity who is subject to this part shall maintain an EAP to strengthen the FFD program by offering confidential assessment, short-term counseling, referral services, and treatment monitoring to its employees who have problems that could adversely affect the employees' abilities to safely and competently perform their duties. Employee assistance programs must be designed to achieve early intervention and provide for confidential assistance.

(b) Licensees and other entities need not provide EAP services to a C/V's employees and individuals who have applied for, but have not yet been granted, authorization.

(c) The EAP staff shall protect the identity and privacy of any individual (including those who have self-referred) seeking assistance from the EAP, except if the individual waives the right to privacy in writing or a determination is made that the individual's condition or actions pose or have posed an immediate hazard to himself or herself or others.

(1) Licensees and other entities may not require the EAP to routinely report the names of individuals who self-refer to the EAP or the nature of the assistance the individuals sought.

(2) If EAP personnel determine that an individual poses or has posed an immediate hazard to himself or herself or others, EAP personnel shall so inform FFD program management, and need not obtain a written waiver of the right to privacy from the individual. The individual conditions or actions that EAP personnel shall report to FFD program management include, but are not limited to, substantive reasons to believe that the individual—

(i) Is likely to commit self-harm or harm to others;

(ii) Has been impaired from using drugs or alcohol while in a work status and has a continuing substance abuse disorder that makes it likely he or she will be impaired while in a work status in the future; or

(iii) Has ever engaged in any acts that would be reportable under § 26.219(b)(1) through (b)(3).

(3) If a licensee or other entity receives a report from EAP personnel under paragraph (c)(2) of this section, the licensee or other entity shall ensure that the requirements of §§ 26.69(d) and 26.77(b) are implemented, as applicable.

§ 26.37 Protection of information.

(a) Each licensee or other entity who is subject to this part who collects personal information about an individual for the purpose of complying with this part, shall establish and maintain a system of files and procedures to protect the personal information. Licensees and other entities shall maintain and use such records with the highest regard for individual privacy.

(b) Licensees and other entities shall obtain a signed consent that authorizes the disclosure of the personal information collected and maintained under this part before disclosing the personal information, except for disclosures to the following individuals:

(1) The subject individual or his or her representative, when the individual has designated the representative in writing for specified FFD matters;

(2) Assigned MROs and MRO staff;

(3) NRC representatives;

(4) Appropriate law enforcement officials under court order;

(5) A licensee's or other entity's representatives who have a need to have access to the information in performing assigned duties, including determinations of fitness, audits of FFD programs, and human resources functions;

(6) The presiding officer in a judicial or administrative proceeding that is initiated by the subject individual;

(7) Persons deciding matters under review in § 26.39; and

(8) Other persons pursuant to court order.

(c) Personal information that is collected under this part must be disclosed to other licensees and entities, including C/Vs, or their authorized representatives, who are legitimately seeking the information for authorization decisions as required by this part and who have obtained a signed release from the subject individual.

(d) Upon receipt of a written request by the subject individual or his or her designated representative, the licensee, other entity, HHS-certified laboratory, or MRO possessing such records shall promptly provide copies of all records pertaining to the determination of a violation of the FFD policy, including test results, MRO reviews, and management actions pertaining to the subject individual. The licensee or other entity shall obtain records related to the results of any relevant laboratory certification, review, or revocation-of-certification proceedings from the HHS-

certified laboratory and provide them to the subject individual upon request.

(e) A licensee's or other entity's contracts with HHS-certified laboratories and licensee testing facility procedures must require that test records be maintained in confidence, except as provided in paragraphs (b), (c), and (d) of this section.

(f) This section does not authorize the licensee or other entity to withhold evidence of criminal conduct from law enforcement officials.

§ 26.39 Review process for fitness-for-duty policy violations.

(a) Each licensee and other entity who is subject to this part shall establish procedures for the review of a determination that an individual who they employ or who has applied for authorization has violated the FFD policy. The procedure must provide for an objective and impartial review of the facts related to the determination that the individual has violated the FFD policy.

(b) The procedure must provide notice to the individual of the grounds for the determination that the individual has violated the FFD policy, and must provide an opportunity for the individual to respond and submit additional relevant information.

(c) The procedure must ensure that the review is conducted by more than one individual and that the individuals who conduct the review are not associated with the administration of the FFD program (see the description of FFD program personnel in § 26.25(a)(4)). The individuals who conduct the review may be management personnel.

(d) If the review finds in favor of the individual, the licensee or other entity shall update the relevant records to reflect the outcome of the review and delete or correct all information the review found to be inaccurate.

(e) Licensees and other entities need not provide a review procedure to a C/V's employee or applicant when the C/V is administering its own FFD program and the FFD policy violation was determined under the C/V's program.

§ 26.41 Audits and corrective action.

(a) *General.* Each licensee and other entity who is subject to this part is responsible for the continuing effectiveness of the FFD program, including FFD program elements that are provided by C/Vs, the FFD programs of any C/Vs that are accepted by the licensee or other entity, and the programs of the HHS-certified laboratories upon whom the licensee or other entity and its C/Vs rely. Each licensee and other entity shall ensure that these programs are audited and that corrective actions are taken to resolve any problems identified.

(b) *FFD program.* Each licensee and other entity who is subject to this part shall ensure that the entire FFD program is audited as needed, but no less frequently than nominally every 24 months. Licensees and other entities are responsible for determining the appropriate frequency, scope, and depth of additional auditing activities within the nominal 24-month period based on the review of program performance indicators, such as the frequency, nature, and severity of discovered problems, testing errors, personnel or procedural changes, previous audit findings, and ''lessons learned.''

(c) *C/Vs and HHS-certified laboratories.* (1) FFD services that are provided to a licensee or other entity by C/V personnel who are off site or are not under the direct daily supervision or observation of the licensee's or other entity's personnel and HHS-certified laboratories must be audited on a nominal 12-month frequency.

(2) Audits of HHS-certified laboratories that are conducted for licensees and other entities who are subject to this part need not duplicate areas inspected in the most recent HHS certification inspection. However, the licensee and other entity shall review the HHS certification inspection records and reports to identify any areas in which the licensee or other entity uses services that the HHS certification inspection did not address. The licensee or other entity shall ensure that any such areas are audited on a nominal 12-month frequency. Licensees and other entities need not audit organizations and professionals who may provide an FFD program service to the licensee or other entity, but who are not routinely involved in providing services to a licensee's or other entity's FFD program, as specified in § 26.25(b)(1).

(d) *Contracts.* (1) Licensees' and other entities' contracts with C/Vs and HHS-certified laboratories must reserve the right to audit the C/V, the C/V's subcontractors providing FFD program services, and the HHS-certified laboratories at any time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the audits.

(2) Licensees' and other entities' contracts with C/Vs and HHS-certified laboratories must also permit the licensee or other entity to obtain copies of and take away any documents, including reviews and inspections pertaining to a laboratory's certification by HHS, and any other data that may be needed to assure that the C/V, its subcontractors, or the HHS-certified laboratory are performing their functions properly and that staff and procedures meet applicable requirements. In a contract with a licensee or other entity who is subject to this part, an HHS-certified laboratory may reasonably limit the use and dissemination of any documents copied or taken away by the licensee's or other entity's auditors in order to ensure the protection of proprietary information and donors' privacy.

(3) In addition, before awarding a contract, the licensee or other entity shall ensure completion of pre-award inspections and/or audits of the procedural aspects of the HHS-certified laboratory's drug-testing operations, except as provided in paragraph (g)(5) of this section.

(e) *Conduct of audits.* Audits must focus on the effectiveness of the FFD program or program element(s), as appropriate, and must be conducted by individuals who are qualified in the subject(s) being audited. The individuals performing the audit of the FFD program or program element(s) shall be independent from both the subject FFD program's management and from personnel who are directly responsible for implementing the FFD program.

(f) *Audit results.* The result of the audits, along with any recommendations, must be documented and reported to senior corporate and site management. Each audit report must identify conditions that are adverse to the proper performance of the FFD program, the cause of the condition(s), and, when appropriate, recommended corrective actions. The licensee or other entity shall review the audit findings and take corrective actions, including re-auditing of the deficient areas where indicated, to preclude, within reason, repetition of the condition. The resolution of the audit findings and corrective actions must be documented.

(g) *Sharing of audits.* Licensees and other entities may jointly conduct audits, or may accept audits of C/Vs and HHS-certified laboratories that were conducted by other licensees and entities who are subject to this part, if the audit addresses the services obtained from the C/V or HHS-certified laboratory by each of the sharing licensees and other entities.

(1) Licensees and other entities shall review audit records and reports to identify any areas that were not covered by the shared or accepted audit.

(2) Licensees and other entities shall ensure that FFD program elements and services upon which the licensee or

entity relies are audited, if the program elements and services were not addressed in the shared audit.

(3) Sharing licensees and other entities need not re-audit the same C/V or HHS-certified laboratory for the same period of time.

(4) Each sharing licensee and other entity shall maintain a copy of the shared audit and HHS certification inspection records and reports, including findings, recommendations, and corrective actions.

(5) If an HHS-certified laboratory loses its certification, in whole or in part, a licensee or other entity is permitted to immediately use another HHS-certified laboratory that has been audited within the previous 12 months by another NRC licensee or entity who is subject to this part. Within 3 months after the change, the licensee or other entity shall ensure that an audit is completed of any areas that have not been audited by another licensee or entity who is subject to this part within the past 12 months.

Subpart C—Granting and Maintaining Authorization

§ 26.51 Purpose.

This subpart contains FFD requirements for granting and maintaining authorization to have the types of access and be assigned to perform the job duties that are specified in § 26.25(a).

§ 26.53 General provisions.

(a) In order to grant authorization to individuals, a licensee or other entity who is subject to this part shall meet the requirements in this subpart for initial authorization, authorization update, authorization reinstatement, or authorization with potentially disqualifying FFD information, as applicable.

(b) For individuals who have previously held authorization under this part but whose authorization has since been favorably terminated, the licensee or other entity shall implement the requirements for either initial authorization, authorization update, or authorization reinstatement, based upon the total number of days that the individual's authorization is interrupted, to include the day after the individual's last period of authorization was terminated and the intervening days until the day upon which the licensee or other entity grants authorization to the individual. If potentially disqualifying FFD information is disclosed or discovered about an individual, licensees and other entities shall implement the applicable requirements in § 26.69 in order to grant or maintain an individual's authorization.

(c) The licensee or other entity shall ensure that an individual has met the applicable FFD training requirements in §§ 26.29 and 26.197(c) before granting authorization to the individual.

(d) Licensees and other entities who are seeking to grant authorization to an individual who is subject to another FFD program that complies with this part may rely on the transferring FFD program to satisfy the requirements of this part. The individual may maintain his or her authorization if he or she continues to be subject to either the receiving FFD program or the transferring FFD program, or a combination of elements from both programs that collectively satisfy the requirements of this part.

§ 26.55 Initial authorization.

(a) Before granting authorization to an individual who has never held authorization under this part or whose authorization has been interrupted for a period of 3 years or more and whose last period of authorization was terminated favorably, the licensee or other entity shall—

(1) Obtain and review a self-disclosure in accordance with the applicable requirements of § 26.61;

(2) Complete a suitable inquiry in accordance with the applicable requirements of § 26.63;

(3) Ensure that the individual is subject to pre-access drug and alcohol testing in accordance with the applicable requirements of § 26.65; and

(4) Ensure that the individual is subject to random drug and alcohol testing in accordance with the applicable requirements of § 26.67.

(b) If potentially disqualifying FFD information is disclosed or discovered, the licensee or other entity may not grant authorization to the individual, except in accordance with § 26.69.

§ 26.57 Authorization update.

(a) Before granting authorization to an individual whose authorization has been interrupted for more than 365 days but less than 3 years and whose last period of authorization was terminated favorably, the licensee or other entity shall—

(1) Obtain and review a self-disclosure in accordance with the applicable requirements of § 26.61;

(2) Complete a suitable inquiry in accordance with the applicable requirements of § 26.63;

(3) Ensure that the individual is subject to pre-access drug and alcohol testing in accordance with the applicable requirements of § 26.65; and

(4) Ensure that the individual is subject to random drug and alcohol testing in accordance with the applicable requirements of § 26.67.

(b) If potentially disqualifying FFD information is disclosed or discovered, the licensee or other entity may not grant authorization to the individual, except in accordance with § 26.69.

§ 26.59 Authorization reinstatement.

(a) In order to grant authorization to an individual whose authorization has been interrupted for a period of more than 30 days but no more than 365 days and whose last period of authorization was terminated favorably, the licensee or other entity shall—

(1) Obtain and review a self-disclosure in accordance with the applicable requirements of § 26.61;

(2) Complete a suitable inquiry in accordance with the requirements of § 26.63 within 5 business days of reinstating authorization. If the suitable inquiry is not completed within 5 business days due to circumstances that are outside of the licensee's or other entity's control and the licensee or other entity is not aware of any potentially disqualifying information regarding the individual within the past 5 years, the licensee or other entity may maintain the individual's authorization for an additional 5 business days. If the suitable inquiry is not completed within 10 business days of reinstating authorization, the licensee or other entity shall administratively withdraw the individual's authorization until the suitable inquiry is completed;

(3) Ensure that the individual is subject to pre-access drug and alcohol testing in accordance with the applicable requirements of § 26.65; and

(4) Ensure that the individual is subject to random drug and alcohol testing in accordance with the applicable requirements of § 26.67.

(b) If a licensee or other entity administratively withdraws an individual's authorization under paragraph (a)(2) of this section, and until the suitable inquiry is completed, the licensee or other entity may not record the administrative action to withdraw authorization as an unfavorable termination and may not disclose it in response to a suitable inquiry conducted under the provisions of § 26.63, a background investigation conducted under the provisions of this chapter, or any other inquiry or investigation. The individual may not be required to disclose the administrative action in response to requests for self-disclosure of potentially disqualifying FFD information.

(c) Before granting authorization to an individual whose authorization has been interrupted for a period of no more than 30 days and whose last period of authorization was terminated favorably, the licensee or other entity shall—

(1) Obtain and review a self-disclosure in accordance with the applicable requirements of § 26.61;

(2) If the individual's authorization was interrupted for more than 5 days, ensure that the individual is subject to pre-access drug and alcohol testing in accordance with the applicable requirements of § 26.65; and

(3) Ensure that the individual is subject to random drug and alcohol testing in accordance with the applicable requirements of § 26.67.

(d) If potentially disqualifying FFD information is disclosed or discovered, the licensee or other entity may not grant authorization to the individual, except in accordance with § 26.69.

§ 26.61 Self-disclosure and employment history.

(a) Before granting authorization, the licensee or other entity shall obtain a written self-disclosure and employment history from the individual who is applying for authorization, except as follows:

(1) If an individual previously held authorization under this part, and the licensee or other entity has verified that the individual's last period of authorization was terminated favorably, and the individual has been subject to a behavioral observation and arrest-reporting program that meets the requirements of this part throughout the period since the individual's last authorization was terminated, the granting licensee or other entity need not obtain the self-disclosure or employment history in order to grant authorization; and

(2) If the individual's last period of authorization was terminated favorably within the past 30 days, the licensee or other entity need not obtain the employment history.

(b) The written self-disclosure must—

(1) State whether the individual has—

(i) Violated a licensee's or other entity's FFD policy;

(ii) Had authorization denied or terminated unfavorably under §§ 26.61(d), 26.63(d), 26.65(h), 26.67(c), 26.69(f), or 26.75(b) through (e);

(iii) Used, sold, or possessed illegal drugs;

(iv) Abused legal drugs or alcohol;

(v) Subverted or attempted to subvert a drug or alcohol testing program;

(vi) Refused to take a drug or alcohol test;

(vii) Been subject to a plan for substance abuse treatment (except for self-referral); or

(viii) Had legal action or employment action, as defined in § 26.5, taken for alcohol or drug use;

(2) Address the specific type, duration, and resolution of any matter disclosed, including, but not limited to, the reason(s) for any unfavorable termination or denial of authorization; and

(3) Address the shortest of the following periods:

(i) The past 5 years;

(ii) Since the individual's eighteenth birthday; or

(iii) Since the individual's last period of authorization was terminated, if authorization was terminated favorably within the past 3 years.

(c) The individual shall provide a list of all employers, including the current employer, if any, with dates of employment, for the shortest of the following periods:

(1) The past 3 years;

(2) Since the individual's eighteenth birthday; or

(3) Since authorization was last terminated, if authorization was terminated favorably within the past 3 years.

(d) Falsification of the self-disclosure statement or employment history is sufficient cause for denial of authorization.

§ 26.63 Suitable inquiry.

(a) The licensee or other entity shall conduct a suitable inquiry, on a best effort basis, to verify the individual's self-disclosed information and determine whether any potentially disqualifying FFD information is available, except if all of the following conditions are met:

(1) The individual previously held authorization under this part;

(2) The licensee or other entity has verified that the individual's last period of authorization was terminated favorably; and

(3) The individual has been subject to a behavioral observation and arrest-reporting program that meets the requirements of this part throughout the period of interruption.

(b) To meet the suitable inquiry requirement, licensees and other entities may rely upon the information that other licensees and entities who are subject to this part have gathered for previous periods of authorization. Licensees and other entities may also rely upon those licensees' and entities' determinations of fitness, as well as their reviews and resolutions of potentially disqualifying FFD information, for previous periods of authorization.

(c) The licensee or other entity shall conduct the suitable inquiry, on a best effort basis, by questioning both present and former employers.

(1) For the claimed employment period, the suitable inquiry must ascertain the reason for termination, eligibility for rehire, and other information that could reflect on the individual's fitness to be granted authorization.

(2) If the claimed employment was military service, the licensee or other entity who is conducting the suitable inquiry shall request a characterization of service, reason for separation, and any disciplinary actions related to potentially disqualifying FFD information. If the individual's last duty station cannot provide this information, the licensee or other entity may accept a hand-carried copy of the DD 214 presented by the individual which on face value appears to be legitimate. The licensee or other entity may also accept a copy of a DD 214 provided by the custodian of military records.

(3) If a company, previous employer, or educational institution to whom the licensee or other entity has directed a request for information refuses to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, the licensee or other entity shall document this refusal, inability, or unwillingness in the licensee's or other entity's record of the investigation, and obtain a confirmation of employment or educational enrollment and attendance from at least one alternate source, with suitable inquiry questions answered to the best of the alternate source's ability. This alternate source may not have been previously used by the licensee or other entity to obtain information about the individual's character. If the licensee or other entity uses an alternate source because employer information is not forthcoming within 3 business days of the request, the licensee or other entity need not delay granting authorization to wait for any employer response.

(d) In response to another licensee's or other entity's inquiry and presentation of an individual's signed release authorizing the disclosure of information, a licensee or other entity shall disclose whether the subject individual's authorization was denied or terminated unfavorably as a result of a violation of an FFD policy and shall make available the information upon which the denial or unfavorable termination of authorization was based, including, but not limited to, drug or alcohol test results. The failure of an

individual to authorize the release of information for the suitable inquiry is sufficient cause to deny authorization.

(e) In conducting a suitable inquiry, the licensee or other entity may obtain information and documents by electronic means, including, but not limited to, telephone, facsimile, or e-mail. The licensee or other entity shall make a record of the contents of the telephone call and shall retain that record, and any documents or electronic files obtained electronically, in accordance with §§ 26.211 and 26.213(a), (b), and (c), as applicable.

(f) The licensee or other entity shall conduct the suitable inquiry as follows:

(1) *Initial authorization.* The period of the suitable inquiry must be the past 3 years or since the individual's eighteenth birthday, whichever is shorter. For the 1-year period immediately preceding the date upon which the individual applies for authorization, the licensee or other entity shall conduct the suitable inquiry with every employer, regardless of the length of employment. For the remaining 2-year period, the licensee or other entity shall conduct the suitable inquiry with the employer by whom the individual claims to have been employed the longest within each calendar month, if the individual claims employment during the given calendar month.

(2) *Authorization update.* The period of the suitable inquiry must be the period since authorization was terminated. For the 1-year period immediately preceding the date upon which the individual applies for authorization, the licensee or other entity shall conduct the suitable inquiry with every employer, regardless of the length of employment. For the remaining period since authorization was terminated, the licensee or other entity shall conduct the suitable inquiry with the employer by whom the individual claims to have been employed the longest within each calendar month, if the individual claims employment during the given calendar month.

(3) *Authorization reinstatement after an interruption of more than 30 days.* The period of the suitable inquiry must be the period since authorization was terminated. The licensee or other entity shall conduct the suitable inquiry with the employer by whom the individual claims to have been employed the longest within the calendar month, if the individual claims employment during the given calendar month.

§ 26.65 Pre-access drug and alcohol testing.

(a) *Purpose.* This section contains pre-access testing requirements for granting authorization to an individual who either has never held authorization or whose last period of authorization was terminated favorably and about whom no potentially disqualifying FFD information has been discovered or disclosed that was not previously reviewed and resolved by a licensee or other entity who is subject to this part.

(b) *Accepting tests conducted within the past 30 days.* If an individual has negative results from drug and alcohol tests that were conducted in accordance with the requirements of this part before the individual applied for authorization from the licensee or other entity, and the specimens for such testing were collected within the 30-day period preceding the day upon which the licensee or other entity grants authorization to the individual, the licensee or other entity may rely upon the results of those drug and alcohol tests to meet the requirements for pre-access testing in this section.

(c) *Initial authorization and authorization update.* Before granting authorization to an individual who has never been authorized or whose authorization has been interrupted for a period of more than 365 days, the licensee or other entity shall verify that the results of pre-access drug and alcohol tests are negative. The licensee or other entity need not conduct pre-access testing if—

(1) An individual previously held authorization under this part and has been subject to both a drug and alcohol testing program that includes random testing and a behavioral observation and arrest reporting program which meet the requirements of this part from the date upon which the individual's last authorization was terminated through the date upon which the individual is granted authorization; or

(2) The licensee or other entity relies upon negative results from drug and alcohol tests that were conducted before the individual applied for authorization, as permitted under paragraph (b) of this section, and the individual remains subject to a behavioral observation and arrest reporting program that meets the requirements of this part, beginning on the date upon which the drug and alcohol testing was conducted through the date upon which the individual is granted authorization and thereafter.

(d) *Authorization reinstatement after an interruption of more than 30 days.* (1) In order to reinstate authorization for an individual whose authorization has been interrupted for a period of more than 30 days but no more than 365 days, except as permitted in paragraph (d)(2) of this section, the licensee or other entity shall—

(i) Verify that the individual has negative results from alcohol testing and collect a specimen for drug testing before reinstating authorization; and

(ii) Verify that the drug test results are negative within 5 business days of specimen collection or administratively withdraw authorization until the drug test results are received.

(2) The licensee or other entity need not conduct pre-access testing of these individuals if—

(i) The individual previously held authorization under this part and has been subject both to a drug and alcohol testing program that includes random testing and a behavioral and arrest-reporting program that meet the requirements of this part from the date upon which the individual's last authorization was terminated through the date upon which the individual is granted authorization; or

(ii) The licensee or other entity relies upon negative results from drug and alcohol tests that were conducted before the individual applied for authorization, as permitted under paragraph (b) of this section, and the individual remains subject to a behavioral observation and arrest reporting program that meets the requirements of this part, beginning on the date upon which the drug and alcohol testing was conducted through the date upon which the individual is granted authorization.

(e) *Authorization reinstatement after an interruption of 30 or fewer days.* (1) The licensee or other entity need not conduct pre-access testing before granting authorization to an individual whose authorization has been interrupted for 5 or fewer days.

(2) In order to reinstate authorization for an individual whose authorization has been interrupted for a period of more than 5 days but not more than 30 days, except as permitted in paragraph (e)(3) of this section, the licensee or other entity shall take the following actions:

(i) The licensee or other entity shall subject the individual to random selection for pre-access drug and alcohol testing at a one-time probability that is equal to or greater than the normal testing rate specified in § 26.31(d)(2)(vi) calculated for a 30-day period;

(ii) If the individual is not selected for pre-access testing under this paragraph, the licensee or other entity need not perform pre-access drug and alcohol tests; or

(iii) If the individual is selected for pre-access testing under this paragraph, the licensee or other entity shall—

(A) Verify that the individual has negative results from alcohol testing and collect a specimen for drug testing before reinstating authorization; and

(B) Verify that the drug test results are negative within 5 business days of specimen collection or administratively withdraw authorization until negative drug test results are received.

(3) If the individual previously held authorization under this part and has been subject to both a drug and alcohol testing program that included random testing and a behavioral observation and arrest reporting program that meet the requirements of this part from the date upon which the individual's last authorization was terminated through the date upon which the individual is granted authorization, then the granting licensee or other entity need not conduct pre-access testing of the individual.

(f) *Time period for testing.* If pre-access testing is required under this section, the licensee or other entity must collect the specimens within the 30-day period that precedes the date upon which the licensee or entity grants authorization to an individual.

(g) *Administrative withdrawal of authorization.* If a licensee or other entity administratively withdraws an individual's authorization under paragraphs (d)(1)(ii) or (e)(2)(iii)(B) of this section, and until the drug test results are known, the licensee or other entity may not record the administrative action to withdraw authorization as an unfavorable termination. The individual may not be required to disclose the administrative action in response to requests for self-disclosure of potentially disqualifying FFD information. Immediately upon receipt of negative test results, the licensee or other entity shall ensure that any matter that could link the individual to the temporary administrative action is eliminated from the tested individual's personnel record and other records.

(h) *Sanctions for a confirmed non-negative pre-access test result.* If an individual has confirmed non-negative test results from any drug, validity, or alcohol tests that may be required in this section, the licensee or other entity shall, at a minimum and as appropriate—

(1) Deny authorization to the individual, as required by §§ 26.75(b), (d), (e)(2), or (g);

(2) Terminate the individual's authorization, if it has been reinstated, in accordance with §§ 26.75(e)(1) or (f); or

(3) Grant authorization to the individual only in accordance with the requirements of § 26.69.

§ 26.67 Random drug and alcohol testing of individuals who have applied for authorization.

(a) When the licensee or other entity collects specimens from an individual for any pre-access testing that may be required under §§ 26.65 or 26.69, and thereafter, the licensee or other entity shall subject the individual to random testing in accordance with § 26.31(d)(2), except if—

(1) The licensee or other entity does not grant authorization to the individual; or

(2) The licensee or other entity relies upon drug and alcohol tests to meet the applicable requirements for pre-access testing that were conducted before the individual applied for authorization. If the licensee or other entity relies upon drug and alcohol tests that were conducted before the individual applied for authorization, the licensee or other entity shall subject the individual to random testing when the individual arrives at a licensee's or other entity's facility for in-processing and thereafter.

(b) If an individual is selected for one or more random tests after any applicable requirement for pre-access testing in §§ 26.65 or 26.69 has been met, the licensee or other entity may grant authorization before random testing is completed in accordance with § 26.31(d)(2), if the individual has met all other applicable requirements for authorization.

(c) If an individual has confirmed non-negative test results from any drug, validity, or alcohol test required in this section, the licensee or other entity shall, at a minimum and as appropriate—

(1) Deny authorization to the individual, as required by §§ 26.75(b), (d), (e)(2), or (g);

(2) Terminate the individual's authorization, if it has been granted, as required by §§ 26.75(e)(1) or (f); or

(3) Grant authorization to the individual only in accordance with the requirements of § 26.69.

§ 26.69 Authorization with potentially disqualifying fitness-for-duty information.

(a) *Purpose.* This section defines the management actions that licensees and other entities who are subject to this part shall take in order to grant or maintain, at the licensee's or other entity's discretion, the authorization of an individual who is in the following circumstances:

(1) Potentially disqualifying FFD information within the past 5 years has been disclosed or discovered about the individual by any means, including, but not limited to, the individual's self-disclosure, the suitable inquiry, drug and alcohol testing, the administration of the FFD program, a self-report of a legal action, behavioral observation, or other sources of information, including, but not limited to, any background investigation or credit and criminal history check conducted under the requirements of this chapter; and

(2) The potentially disqualifying FFD information has not been reviewed and favorably resolved by a previous licensee or other entity who is subject to this part.

(b) *Authorization after a first confirmed positive drug or alcohol test result or a 5-year denial of authorization.* The requirements in this paragraph apply to individuals whose authorization was denied or terminated unfavorably for a first violation of an FFD policy involving a confirmed positive drug or alcohol test result and individuals whose authorization was denied for 5 years under § 26.75(c), (d), (e)(2), or (f). In order to grant, and subsequently maintain, the individual's authorization, the licensee or other entity shall—

(1) Obtain and review a self-disclosure from the individual that addresses the shorter period of either the past 5 years or since the individual last held authorization, and verify that the self-disclosure does not contain any previously undisclosed potentially disqualifying FFD information before granting authorization;

(2) Complete a suitable inquiry with every employer by whom the individual claims to have been employed during the period addressed in the self-disclosure in accordance with the requirements of § 26.63, and obtain and review any records that other licensees or entities who are subject to this part may have developed related to the unfavorable termination or denial of authorization;

(3) If the individual was subject to a 5-year denial of authorization under this part, verify that he or she has abstained from substance abuse for at least the past 5 years;

(4) Ensure that an SAE conducts a determination of fitness and indicates that the individual is fit to safely and competently perform his or her duties.

(i) If the individual's authorization was denied or terminated unfavorably for a first confirmed positive drug or alcohol test result, ensure that clinically appropriate treatment plans are developed by the SAE before granting authorization;

(ii) If the individual was subject to a 5-year denial of authorization, ensure that any recommendations for treatment and followup testing from the SAE's determination of fitness are initiated before granting authorization; and

(iii) Verify that the individual is in compliance with, and successfully completes, any followup testing and treatment plans.

(5) Within 10 business days before granting authorization, perform a pre-access alcohol test, collect a specimen for drug testing under direct observation, and ensure that the individual is subject to random testing thereafter. Verify that the pre-access drug and alcohol test results are negative before granting authorization.

(6) If the individual's authorization was denied or terminated unfavorably for a first confirmed positive drug or alcohol test result and a licensee or other entity grants authorization to the individual, ensure that the individual is subject to unannounced testing at least quarterly for a period of 3 calendars years after the date upon which the individual is again granted authorization. Both random and followup tests, as defined in § 26.31(c), satisfy this requirement. Verify that the individual has negative test results from a minimum of 15 tests distributed over the 3-year period, except as follows:

(i) If the individual does not continuously hold authorization during the 3-year period, the licensee or other entity shall ensure that at least one unannounced test is conducted in any quarter during which the individual holds authorization;

(ii) If the 15 tests are not completed within the 3-year period specified in this paragraph due to periods during which the individual does not hold authorization, the testing program may be extended up to 5 years to complete the 15 tests;

(iii) If the individual does not hold authorization during the 5-year period a sufficient number of times or for sufficient periods of time to complete the 15 tests required in this paragraph, the licensee or other entity shall ensure that an SAE conducts a determination of fitness to assess whether further followup testing is required and implement the SAE's recommendations; and

(7) Verify that any drug and alcohol tests required in this paragraph, and any other drug and alcohol tests that are conducted under this part since authorization was terminated or denied, yield results indicating no further drug abuse, as determined by the MRO after review, or alcohol abuse, as determined by the result of confirmatory alcohol testing.

(c) *Granting authorization with other potentially disqualifying FFD information.* The requirements in this paragraph apply to an individual who has applied for authorization, and about whom potentially disqualifying FFD information has been discovered or disclosed that is not a first confirmed positive drug or alcohol test result or a 5-year denial of authorization. Before granting authorization to the individual, the licensee or other entity shall—

(1) Verify that the individual's self-disclosure and employment history addresses the applicable period in § 26.61(b)(3);

(2) Complete a suitable inquiry with every employer by whom the individual claims to have been employed during the period addressed in the self-disclosure in accordance with the requirements of § 26.63, and obtain and review any records that other licensees or entities who are subject to this part may have developed with regard to potentially disqualifying FFD information about the individual from the past 5 years;

(3) If the designated reviewing official determines that a determination of fitness is required, verify that a professional with the appropriate qualifications, as specified in § 26.187(a), has indicated that the individual is fit to safely and competently perform his or her duties;

(4) Ensure that the individual is in compliance with, or has completed, any plans for treatment and drug and alcohol testing from the determination of fitness, which may include the collection of urine specimens under direct observation; and

(5) Verify that the results of pre-access drug and alcohol tests are negative before granting authorization, and that the individual is subject to random testing after the specimens have been collected for pre-access testing and thereafter.

(d) *Maintaining authorization with other potentially disqualifying FFD information.* If an individual is authorized when other potentially disqualifying FFD information is disclosed or discovered, in order to maintain the individual's authorization, the licensee or other entity shall—

(1) Ensure that the licensee's or other entity's designated reviewing official completes a review of the circumstances associated with the information;

(2) If the designated reviewing official concludes that a determination of fitness is required, verify that a professional with the appropriate qualifications, as specified in § 26.187(a), has indicated that the individual is fit to safely and competently perform his or her duties; and

(3) If the reviewing official determines that maintaining the individual's authorization is warranted, implement any recommendations for treatment and followup drug and alcohol testing from the determination of fitness, which may include the collection of urine specimens under direct observation, and ensure that the individual successfully completes the treatment plans.

(e) *Accepting followup testing and treatment plans from another Part 26 program.* Licensees and other entities may rely upon followup testing, treatment plans, and determinations of fitness that were conducted in accordance with this part by another licensee or entity.

(1) If an individual leaves the FFD program in which a treatment and followup testing plan was required under paragraphs (b), (c), or (d) of this section, and is granted authorization by the same or another licensee or entity, the licensee or other entity who grants authorization to the individual shall ensure that any treatment and followup testing requirements are met, with accountability assumed by the granting licensee or other entity.

(2) If the previous licensee or other entity determined that the individual successfully completed any required treatment and followup testing, and the individual's last period of authorization was terminated favorably, the receiving licensee or entity may rely upon the previous determination of fitness and no further review or followup is required.

(f) *Sanctions for confirmed non-negative drug and alcohol test results.* If an individual has confirmed non-negative test results from any drug, validity, or alcohol test required in this section, the licensee or other entity shall, at a minimum and as appropriate—

(1) Deny authorization to the individual, as required by §§ 26.75(b), (d), (e)(2), or (g); or

(2) Terminate the individual's authorization, if it has been granted, as required by §§ 26.75(e)(1) or (f).

§ 26.71 Maintaining authorization.

(a) Individuals may maintain authorization under the following conditions:

(1) The individual complies with the licensee's or other entity's FFD policies to which he or she is subject, including the responsibility to report any legal actions, as defined in § 26.5;

(2) The individual remains subject to a drug and alcohol testing program that

complies with the requirements of this part, including random testing;

(3) The individual remains subject to a behavioral observation program that complies with the requirements of this part; and

(4) The individual successfully completes required FFD training, in accordance with the schedule specified in § 26.29(c).

(b) If an authorized individual is not subject to an FFD program that meets the requirements of this part for more than 30 continuous days, then the licensee or other entity shall terminate the individual's authorization and the individual shall meet the requirements in this subpart, as applicable, to regain authorization.

Subpart D—Management Actions and Sanctions to be Imposed

§ 26.75 Sanctions.

(a) This section defines the minimum sanctions that licensees and other entities shall impose when an individual has violated the drug and alcohol provisions of an FFD policy. A licensee or other entity who is subject to this part may impose more stringent sanctions, except as specified in paragraph (h) of this section.

(b) Any act or attempted act to subvert the testing process, including, but not limited to, refusing to provide a specimen and providing or attempting to provide a substituted or adulterated specimen, for any test required under this part must result in the immediate unfavorable termination of the individual's authorization and permanent denial of authorization thereafter.

(c) Any individual who is determined to have been involved in the sale, use, or possession of illegal drugs or the consumption of alcohol within a protected area of any nuclear power plant, within a facility that is licensed to possess or use formula quantities of SSNM, within a transporter's facility or vehicle, or while performing the job duties that require the individual to be subject to this part shall immediately have his or her authorization unfavorably terminated and denied thereafter for a minimum of 5 years from the date of the unfavorable termination of authorization.

(d) Any individual who resigns or withdraws his or her application for authorization before authorization is terminated or denied for a first violation of the FFD policy involving a confirmed positive drug or alcohol test result shall immediately have his or her authorization denied for a minimum of 5 years from the date of termination or denial. If an individual resigns or withdraws his or her application for authorization before his or her authorization is terminated or denied for any violation of the FFD policy, the licensee or other entity shall record the resignation or withdrawal, the nature of the violation, and the minimum sanction that would have been required under this part had the individual not resigned or withdrawn his or her application for authorization.

(e) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs or consumption of alcohol on site, a confirmed positive drug or alcohol test result must be presumed to be an indication of off-site drug or alcohol use in violation of the FFD policy.

(1) The first violation of the FFD policy involving a confirmed positive drug or alcohol test result must, at a minimum, result in the immediate unfavorable termination of the individual's authorization for at least 14 days.

(2) Any subsequent confirmed positive drug or alcohol test result, including during an assessment or treatment period, must result in the denial of authorization for a minimum of 5 years from the date of denial.

(f) Paragraph (e) of this section does not apply to the misuse of prescription and over-the-counter drugs, except if the MRO determines that misuse of the prescription or over-the-counter drug represents substance abuse. Sanctions for misuse of prescription and over-the-counter drugs must be sufficient to deter misuse of those substances.

(g) For individuals whose authorization was denied for 5 years under paragraphs (c), (d), (e), or (f) of this section, any subsequent violation of the drug and alcohol provisions of an FFD policy must immediately result in permanent denial of authorization.

(h) A licensee or other entity who is subject to this part may not terminate an individual's authorization and may not subject the individual to other administrative action based solely on a non-negative test result from any validity screening, initial validity, or initial drug test, other than positive initial test results for marijuana or cocaine metabolites from a specimen that appears to be valid on the basis of either validity screening or initial validity testing performed at a licensee testing facility, unless other evidence, including information obtained under the process set forth in § 26.189, indicates that the individual is impaired or might otherwise pose a safety hazard.

(i) With respect to initial drug test results from a licensee testing facility for marijuana and cocaine metabolites from a specimen that appears to be valid, licensee testing facility personnel may inform licensee or other entity management of the non-negative initial drug test result and the specific drugs or metabolites identified, and licensees or other entities may administratively withdraw the donor's authorization or take lesser administrative actions against the donor based on a positive initial drug test result from a specimen that appears to be valid, provided that the licensee or other entity complies with the following conditions:

(1) For the drug for which action will be taken, at least 85 percent of the specimens that were determined to be positive as a result of initial drug tests at the licensee testing facility during the past 12-month data reporting period submitted to the NRC under § 26.217 were subsequently reported as positive by the HHS-certified laboratory as the result of confirmatory testing;

(2) There is no loss of compensation or benefits to the donor during the period of temporary administrative action;

(3) Immediately upon receipt of a negative report from the HHS-certified laboratory or MRO, any matter that could link the donor to the temporary administrative action is eliminated from the donor's personnel record and other records; and

(4) Licensees and other entities may not disclose the temporary administrative action against an individual whose initial drug test result is not subsequently confirmed by the MRO as a violation of the FFD policy in response to a suitable inquiry conducted under the provisions of § 26.63, a background investigation conducted under the provisions of this chapter, or to any other inquiry or investigation.

(i) To ensure that no records are retained, access to the system of files and records must be provided to personnel who are conducting reviews, inquiries into allegations, or audits under the provisions of § 26.41, and to NRC inspectors.

(ii) The licensee or other entity shall provide the donor with a written statement that the records specified in § 26.213 and § 26.215 have not been retained with respect to the temporary administrative action and shall inform the donor in writing that the temporary administrative action that was taken will not be disclosed and need not be disclosed by the individual in response to requests for self-disclosure of potentially disqualifying FFD information.

§ 26.77 Management actions regarding possible impairment.

(a) This section defines management actions that licensees and other entities must take when an individual who is subject to this part shows indications that he or she may not be fit to safely and competently perform his or her duties.

(b) If an individual appears to be impaired or the individual's fitness is questionable, except as permitted under § 26.27(c)(3) and § 26.199(e) and (f), the licensee or other entity shall take immediate action to prevent the individual from performing the job duties that require him or her to be subject to this part.

(1) If an observed behavior or physical condition creates a reasonable suspicion of possible substance abuse, the licensee or other entity shall perform drug and alcohol tests and the results must be negative before the individual returns to performing the job duties that require the individual to be subject to this part. However, if the physical condition is the smell of alcohol with no other behavioral or physical indications of impairment, then only an alcohol test is required, and the results must be negative before the individual returns to performing his or her duties.

(2) If a licensee or C/V who is subject to Subpart I is certain that the observed behavior or physical condition is the result solely of fatigue, the licensee or C/V shall ensure that a fatigue assessment is conducted in accordance with § 26.201 and need not perform drug and alcohol tests nor a determination of fitness under § 26.189.

(3) For other indications of possible impairment that do not create a reasonable suspicion of substance abuse (or fatigue, in the case of licensees and C/Vs who are subject to Subpart I), the licensee or other entity may permit the individual to return to performing his or her job duties only after the impairing or questionable conditions are resolved and a determination of fitness indicates that the individual is fit to safely and competently perform his or her duties.

(c) If a licensee or other entity has a reasonable belief that an NRC employee or NRC contractor may be under the influence of any substance, or is otherwise unfit for duty, the licensee or other entity may not deny access but shall escort the individual. In any such instance, the licensee or other entity shall immediately notify the appropriate Regional Administrator by telephone, followed by written notification (*e.g.*, e-mail or fax) to document the verbal notification. If the Regional Administrator cannot be reached, the licensee or other entity shall notify the NRC Operations Center.

Subpart E—Collecting Specimens for Testing

§ 26.81 Purpose.

This subpart contains requirements for collecting specimens for drug and alcohol testing.

§ 26.83 Specimens to be collected.

Except as permitted under § 26.31(d)(5), licensees and other entities who are subject to this part shall—

(a) Collect either breath or oral fluids for initial tests for alcohol. Breath must be collected for confirmatory tests for alcohol; and

(b) Collect only urine specimens for both initial and confirmatory tests for drugs.

§ 26.85 Collector qualifications and responsibilities.

(a) *Urine collector qualifications.* Urine collectors shall be knowledgeable of the requirements of this part, the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to urine collection procedures. Collectors shall receive qualification training that meets the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the custody-and-control form;

(2) Methods to address ''problem'' collections, including, but not limited to, collections involving ''shy bladder'' and attempts to tamper with a specimen;

(3) How to correct problems in collections; and

(4) The collector's responsibility for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(b) *Alcohol collector qualifications.* Alcohol collectors shall be knowledgeable of the requirements of this part, the FFD policy and procedures of the licensee or other entity for whom collections are performed, and shall keep current on any changes to alcohol collection procedures. Collectors shall receive qualification training meeting the requirements of this paragraph and demonstrate proficiency in applying the requirements of this paragraph before serving as a collector. At a minimum, qualification training must provide instruction on the following subjects:

(1) The alcohol testing requirements of this part;

(2) Operation of the particular alcohol testing device(s) [*i.e.*, the alcohol screening devices (ASDs) or evidential breath testing devices (EBTs)] to be used, consistent with the most recent version of the manufacturers' instructions;

(3) Methods to address ''problem'' collections, including, but not limited to, collections involving ''shy lung'' and attempts to tamper with a specimen;

(4) How to correct problems in collections; and

(5) The collector's responsibility for maintaining the integrity of the specimen collection process, carefully ensuring the privacy of the donor, and avoiding any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(c) *Alternative collectors.* A medical professional, technologist, or technician may serve as a collector without meeting the collector qualification requirements in paragraphs (a) or (b) of this section, as applicable, if the individual's normal workplace is not at the licensee's or other entity's facility and he or she—

(1) Is not employed by the licensee's or other entity's FFD program;

(2) Does not routinely provide FFD program services to the licensee or other entity;

(3) Is licensed or otherwise approved to practice in the jurisdiction in which the collection occurs;

(4) Is provided with detailed, clearly-illustrated, written instructions for collecting specimens in accordance with this subpart; and

(5) Performs collections in accordance with those instructions.

(d) *Personnel available to testify at proceedings.* The licensee or other entity shall ensure that qualified collection site personnel, when required, are available to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on non-negative alcohol, validity, or drug test results from specimens collected by or under contract to the licensee or other entity.

§ 26.87 Collection sites.

(a) Each FFD program must have one or more designated collection sites that have all necessary personnel, materials, equipment, facilities, and supervision to collect specimens for drug testing and to

perform alcohol testing. Each collection site must provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a drug testing laboratory, and for the collection of oral fluids or breath specimens, and the security of alcohol testing devices and test results. A properly equipped mobile facility that meets the requirements of this part is an acceptable collection site.

(b) The collection site must provide for the donor's visual privacy while the donor and collector are viewing the results of an alcohol test, and for individual privacy while the donor is submitting a urine specimen, except if a directly observed urine specimen collection is required. Unauthorized personnel may not be present for the specimen collection.

(c) Contracts for collection site services must permit representatives of the NRC, licensee, or other entity to conduct unannounced inspections and audits and to obtain all information and documentation that is reasonably relevant to the inspections and audits.

(d) Licensees and other entities shall take the following measures to prevent unauthorized access to the collection site that could compromise the integrity of the collection process or the specimens.

(1) Unauthorized personnel may not be permitted in any part of the designated collection site where specimens are collected or stored;

(2) A designated collection site must be secure. If a collection site is dedicated solely to specimen collection, it must be secure at all times. Methods of assuring security may include, but are not limited to, physical measures to control access, such as locked doors, alarms, or visual monitoring of the collection site when it is not occupied; and

(3) If a collection site cannot be dedicated solely to collecting specimens, the portion of the facility that is used for specimen collection must be secured and, during the time period during which a specimen is being collected, a sign must be posted to indicate that access is permitted only for authorized personnel.

(e) The following steps must be taken to deter the dilution and adulteration of urine specimens at the collection site:

(1) Agents that color any source of standing water in the stall or room in which the donor will provide a specimen, including, but not limited to, the toilet bowl or tank, must be placed in the source of standing water, so that the reservoirs of water are neither yellow nor colorless. Coloring agents may not interfere with drug or validity tests;

(2) There must be no other source of water (*e.g.*, no shower or sink) in the enclosure where urination occurs, or the source of water must be rendered unusable; and

(3) Chemicals or products that could be used to contaminate or otherwise alter the specimen must be removed from the collection site or secured. The collector shall inspect the enclosure in which urination will occur before each collection to ensure that no materials are available that could be used to subvert the testing process.

(f) In the exceptional event that a designated collection site is inaccessible and there is an immediate requirement to collect a urine specimen, including, but not limited to, an event investigation, then the licensee or other entity may use a public rest room, on-site rest room, or hospital examining room according to the following procedures:

(1) The facility must be secured by visual inspection to ensure that no unauthorized persons are present, and that undetected access (*e.g.*, through a rear door not in the view of the collector) is impossible. Security during the collection may be maintained by restricting access to collection materials and specimens. In the case of a public rest room, a sign must be posted or an individual assigned to ensure that no unauthorized personnel are present during the entire collection procedure to avoid embarrassment of the donor and distraction of the collector.

(2) If practical, a water coloring agent that meets the requirements of § 26.87(e)(1) must be placed in the toilet bowl to be used by the donor and in any other accessible source of standing water, including, but not limited to, the toilet tank. The collector shall instruct the donor not to flush the toilet.

(3) A collector of the same gender as the donor shall accompany the donor into the area that will be used for specimen collection, but remain outside of the stall, if it is a multi-stalled rest room, or outside of the door to the room, if it is a single rest room, in which the donor will provide the specimen. If a collector of the same gender is not available, the collector shall select a same-gender person to accompany the donor. This person shall be instructed on the collection procedures specified in this subpart and his or her identity must be documented on the custody-and-control form.

(4) After the collector has possession of the specimen, the collector shall inspect the toilet bowl and area to ensure that there is no evidence of a subversion attempt and shall then flush the toilet. The collector shall instruct the donor to participate with the collector in completing the chain-of-custody procedures.

(5) If it is impractical to maintain continuous physical security of a collection site from the time a urine specimen is presented until the sealed container is transferred for shipment, the specimen must remain under the direct control of an individual who is authorized by the licensee or other entity until the specimen is prepared for transfer, storage, or shipping in accordance with § 26.117. The authorized individual shall be instructed on his or her responsibilities for maintaining custody and control of the specimen and his or her custody of the specimen must be documented on the custody-and-control form.

§ 26.89 Preparing to collect specimens for testing.

(a) When an individual has been notified of a requirement for testing and does not appear at the collection site within the time period specified by FFD program procedures, the collector shall inform FFD program management that the individual has not reported for testing. FFD program management shall ensure that the necessary steps are taken to determine whether the individual's undue tardiness or failure to appear for testing constitutes a violation of the licensee's or other entity's FFD policy. If FFD program management determines that the undue tardiness or failure to report for testing represents an attempt to subvert the testing process, the licensee or other entity shall impose on the individual the sanctions in § 26.75(b). If FFD program management determines that the undue tardiness or failure to report does not represent a subversion attempt, the licensee or other entity may not impose sanctions but shall ensure that the individual is tested at the earliest reasonable and practical opportunity after locating the individual.

(b) Donors shall provide acceptable identification before testing.

(1) Acceptable identification includes photo-identification issued by a licensee or other entity who is subject to this part, or by the Federal, State, or local government. Licensees and other entities may not accept faxes or photocopies of identification.

(2) If the donor cannot produce acceptable identification before any testing that is required under this part other than pre-access testing, the collector shall proceed with the test and immediately inform FFD program management that the donor did not

present acceptable identification. If the donor is scheduled for pre-access testing and cannot produce acceptable identification, the collector may not proceed with the collection, and shall inform FFD program management that the individual did not present acceptable identification. When so informed, FFD program management will take the necessary steps to determine whether the lack of identification was an attempt to subvert the testing process.

(3) The collector shall explain the testing procedure to the donor, show the donor the form(s) to be used, and ask the donor to sign a consent-to-testing form. The donor may not be required to list prescription medications or over-the-counter preparations that he or she has recently used.

(c) The collector shall inform the donor that, if the donor leaves the collection site before all of the collection procedures are completed or refuses to cooperate in the specimen collection process, it will be considered a refusal to test, and sanctions for subverting the testing process will be imposed in accordance with § 26.75(b). If the donor fails to remain present through the completion of the collection procedures or refuses to cooperate in the collection procedures, the collector shall inform FFD program management to obtain guidance on the actions to be taken.

(d) In order to promote the security of specimens, avoid distraction of the collector, and ensure against any confusion in the identification of specimens, a collector shall conduct only one collection procedure at any given time. For this purpose, a urine collection procedure is complete when the urine specimen container has been sealed and initialed, the chain-of-custody form has been executed, and the donor has departed the collection site.

§ 26.91 Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use.

(a) *Acceptable alcohol screening devices.* Alcohol screening devices (ASDs), including devices that test specimens of oral fluids or breath, must be approved by the National Highway Traffic Safety Administration (NHTSA) and listed in the most current version of NHTSA's Conforming Products List (CPL) for such devices. An ASD that is listed in the NHTSA CPL may be used only for initial tests for alcohol, and may not be used for confirmatory tests.

(b) *Acceptable evidential breath testing devices.* Evidential breath testing devices (EBTs) listed in the NHTSA CPL for evidential devices that meet the requirements of paragraph (c) of this section must be used to conduct confirmatory alcohol tests, and may be used to conduct initial alcohol tests. Note that, among the devices listed in the CPL for EBTs, only those devices listed without an asterisk (*) may be used for confirmatory alcohol testing under this part.

(c) *EBT capabilities.* An EBT that is listed in the NHTSA CPL for evidential devices that has the following capabilities may be used for conducting initial alcohol tests and must be used for confirmatory alcohol tests under this part:

(1) Provides a printed result of each breath test;

(2) Assigns a unique number to each completed test, which the collector and donor can read before each test and which is printed on each copy of the test result;

(3) Prints, on each copy of the test result, the manufacturer's name for the device, its serial number, and the time of the test;

(4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;

(5) Tests an air blank; and

(6) Performs an external calibration check.

(d) *Quality assurance and quality control of ASDs.* (1) Licensees and other entities shall implement the most recent version of the quality assurance plan submitted to NHTSA for any ASD that is used for initial alcohol testing.

(2) Licensees and other entities may not use an ASD that fails the specified quality control checks or that has passed its expiration date.

(3) For ASDs that test breath specimens and meet EBT requirements for confirmatory testing, licensees and other entities shall also follow the device use and care requirements specified in paragraph (e) of this section.

(e) *Quality assurance and quality control of EBTs.* (1) Licensees and other entities shall implement the most recent version of the manufacturer's instructions for the use and care of the EBT consistently with the quality assurance plan submitted to NHTSA for the EBT, including performing external calibration checks no less frequently than at the intervals specified in the manufacturer's instructions.

(2) When conducting external calibration checks, licensees and other entities shall use only calibration devices appearing on NHTSA's CPL for ''Calibrating Units for Breath Alcohol Tests.''

(3) If an EBT fails an external check of calibration, the licensee or other entity shall take the EBT out of service and cancel every positive test result that was obtained using the EBT from any tests that were conducted after the EBT passed the last external calibration check. The EBT may not be used again for alcohol testing under this part until it is repaired and passes an external calibration check.

(4) Inspection, maintenance, and calibration of the EBT must be performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a State health agency or other appropriate State agency.

§ 26.93 Preparing for alcohol testing.

(a) Immediately before collecting a specimen for alcohol testing, the collector shall—

(1) Ask the donor whether he or she, in the past 15 minutes, has had anything to eat or drink, belched, or put anything into his or her mouth (including, but not limited to, a cigarette, breath mint, or chewing gum), and instruct the donor that he or she should avoid these activities during the collection process;

(2) If the donor states that he or she has not engaged in the activities listed in paragraph (a)(1) of this section, alcohol testing may proceed;

(3) If the donor states that he or she has engaged in any of the activities listed in paragraph (a)(1) of this section, inform the donor that a 15-minute waiting period is necessary to prevent an accumulation of mouth alcohol from leading to an artificially high reading;

(4) Explain that it is to the donor's benefit to avoid the activities listed in paragraph (a)(1) of this section during the collection process;

(5) Explain that the initial and confirmatory tests, if a confirmatory test is necessary, will be conducted at the end of the waiting period, even if the donor has not followed the instructions; and

(6) Document that the instructions were communicated to the donor.

(b) With the exception of the 15-minute waiting period, if necessary, the collector shall begin for-cause alcohol and/or drug testing as soon as reasonably practical after the decision is made that for-cause testing is required. When for-cause alcohol testing is required, alcohol testing may not be delayed by collecting a specimen for drug testing.

§ 26.95 Conducting an initial test for alcohol using a breath specimen.

(a) The collector shall perform the initial breath test as soon as practical after the donor indicates that he or she has not engaged in the activities listed

in paragraph § 26.93(a)(1) or after the 15-minute waiting period has elapsed, if required.

(b) To perform the initial test, the collector shall—

(1) Select, or allow the donor to select, an individually wrapped or sealed mouthpiece from the testing materials;

(2) Open the individually wrapped or sealed mouthpiece in view of the donor and insert it into the device in accordance with the manufacturer's instructions;

(3) Instruct the donor to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the device indicates that an adequate amount of breath has been obtained;

(4) Show the donor the displayed or printed test result; and

(5) Ensure that the test result record can be associated with the donor and is maintained secure.

(c) Unless problems in administering the breath test require an additional collection, only one breath specimen may be collected for the initial test. If an additional collection(s) is required, the collector shall rely upon the test result from the first successful collection to determine the need for confirmatory testing.

§ 26.97 Conducting an initial test for alcohol using a specimen of oral fluids.

(a) To perform the initial test, the collector shall—

(1) Check the expiration date on the device and show it to the donor (the device may not be used after its expiration date);

(2) Open an individually wrapped or sealed package containing the device in the presence of the donor;

(3) Offer the donor the choice of using the device or having the collector use it. If the donor chooses to use it, instruct the donor to insert the device into his or her mouth and use it in the manner described by the device's manufacturer;

(4) If the donor chooses not to use the device, or in all cases in which a new test is necessary because the device failed to activate, insert the device into the donor's mouth, and gather oral fluids in the manner described by the device's manufacturer (wear single-use examination or similar gloves while doing so and change them following each test); and

(5) When the device is removed from the donor's mouth, follow the manufacturer's instructions regarding necessary next steps to ensure that the device has activated.

(b) If the steps in paragraph (a) of this section could not be completed successfully (*e.g.*, the device breaks, the device is dropped on the floor, the device fails to activate), the collector shall—

(1) Discard the device and conduct a new test using a new device. The new device must be one that has been under the collector's control before the test;

(2) Record the reason for the new test;

(3) Offer the donor the choice of using the device or having the collector use it unless the donor, in the opinion of the collector, was responsible for the new test needing to be conducted. If the collector concludes that the donor was responsible, then the collector shall use the device to conduct the test; and

(4) Repeat the procedures in paragraph (a) of this section.

(c) If the second collection attempt in paragraph (b) of this section could not be completed, the collector shall—

(1) End the collection of oral fluids and document the reason(s) that the collection could not be completed; and

(2) Immediately conduct another initial test using an EBT.

(d) The collector shall read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases, the collector shall read the result within 15 minutes of the test. The collector shall then show the device and its reading to the donor, record the result, and record that an ASD was used.

(e) Devices, swabs, gloves, and other materials used in collecting oral fluids may not be re-used.

§ 26.99 Determining the need for a confirmatory test for alcohol.

(a) If the initial test result is less than 0.02 percent BAC, the collector shall declare the test result as negative.

(b) If the initial test result is 0.02 percent BAC or higher, the collector shall ensure that the time at which the test was concluded (*i.e.*, the time at which the test result was known) is recorded and inform the donor that a confirmatory test for alcohol is required.

§ 26.101 Conducting a confirmatory test for alcohol.

(a) The confirmatory test must begin as soon as possible, but no more than 30 minutes after the conclusion of the initial test.

(b) To complete the confirmatory test, the collector shall—

(1) In the presence of the donor, conduct an air blank on the EBT before beginning the confirmatory test and show the result to the donor;

(2) Verify that the reading is 0.00. If the reading is 0.00, the test may proceed. If not, then conduct another air blank;

(3) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, take the EBT out of service and proceed with the test using another EBT. If an EBT is taken out of service for this reason, the EBT may not be used for further testing until it is found to be within tolerance limits on an external check of calibration;

(4) Open an individually wrapped or sealed mouthpiece in view of the donor and insert it into the device in accordance with the manufacturer's instructions;

(5) Read the unique test number displayed on the EBT, and ensure that the donor reads the same number;

(6) Instruct the donor to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the device indicates that an adequate amount of breath has been obtained; and

(7) Show the donor the result displayed on or printed by the EBT, record the result, and document the time at which the confirmatory test result was known.

(c) Unless there are problems in administering the breath test that require an additional collection, the collector shall collect only one breath specimen for the confirmatory test. If an additional collection(s) is required because of problems in administering the breath test, the collector shall rely upon the breath specimen from the first successful collection to determine the confirmatory test result. Collection procedures may not require collectors to calculate an average or otherwise combine results from two or more breath specimens to determine the confirmatory test result.

(d) If an EBT that meets the requirements of § 26.91(b) and (c) was used for the initial alcohol test, the same EBT may be used for confirmatory testing.

§ 26.103 Determining a confirmed positive test result for alcohol.

(a) A confirmed positive test result for alcohol must be declared under any of the following conditions:

(1) When the result of the confirmatory test for alcohol is 0.04 percent BAC or higher;

(2) When the result of the confirmatory test for alcohol is 0.03 percent BAC or higher and the donor had been in a work status for at least 1 hour at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.); or

(3) When the result of the confirmatory test for alcohol is 0.02 percent BAC or higher and the donor had been in a work status for at least 2 hours at the time the initial test was

concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.).

(b) When the result of the confirmatory test for alcohol is equal to or greater than 0.01 percent BAC but less than 0.02 percent BAC and the donor has been in a work status for 3 hours or more at the time the initial test was concluded (including any breaks for rest, lunch, dental/doctor appointments, etc.), the collector shall declare the test result as negative and inform FFD program management. The licensee or other entity shall prohibit the donor from performing any duties that require him or her to be subject to this part and may not return the individual to performing such duties until a determination of fitness indicates that the donor is fit to safely and competently perform his or her duties.

§ 26.105 Preparing for urine collection.

(a) The collector shall ask the donor to remove any unnecessary outer garments, such as a coat or jacket, which might conceal items or substances that the donor could use to tamper with or adulterate his or her urine specimen. The collector shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments outside of the room or stall in which the urine specimen is collected. The donor may retain his or her wallet.

(b) The collector shall also ask the donor to empty his or her pockets and display the items in them to enable the collector to identify items that the donor could use to adulterate or substitute his or her urine specimen. The donor shall permit the collector to make this observation. If the donor refuses to show the collector the items in his or her pockets, this is considered a refusal to test. If an item is found that appears to have been brought to the collection site with the intent to adulterate the specimen, the collector shall contact the MRO or FFD program manager to determine whether a directly observed collection is required. If the item appears to have been inadvertently brought to the collection site, the collector shall secure the item and continue with the normal collection procedure. If the collector identifies nothing that the donor could use to adulterate or substitute the specimen, the donor may place the items back into his or her pockets.

(c) The collector shall instruct the donor to wash and dry his or her hands before urinating.

(d) After washing his or her hands, the donor shall remain in the presence of the collector and may not have access to any water fountain, faucet, soap dispenser, cleaning agent, or other materials that he or she could use to adulterate the urine specimen.

(e) The collector may select, or allow the donor to select, an individually wrapped or sealed collection container from the collection kit materials. Either the collector or the donor, with both present, shall unwrap or break the seal of the collection container. With the exception of the collection container, the donor may not take anything from the collection kit into the room or stall used for urination.

§ 26.107 Collecting a urine specimen.

(a) The collector shall direct the donor to go into the room or stall used for urination, provide a specimen of the quantity that has been predetermined by the licensee or other entity, as defined in § 26.109(a), not flush the toilet, and return with the specimen as soon as the donor has completed the void.

(1) The donor shall provide his or her urine specimen in the privacy of a room, stall, or otherwise partitioned area (private area) that allows for individual privacy, except if a directly observed collection is required, as described in § 26.115;

(2) Except in the case of a directly observed collection, no one may go with the donor into the room or stall in which the donor will provide his or her specimen; and

(3) The collector may set a reasonable time limit for voiding.

(b) The collector shall pay careful attention to the donor during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (*e.g.*, substitute urine is in plain view or an attempt to bring an adulterant or urine substitute into the private area used for urination). If any such conduct is detected, the collector shall document the conduct on the custody-and-control form and contact FFD program management to determine whether a directly observed collection is required, as described in § 26.115.

(c) After the donor has provided the urine specimen and submitted it to the collector, the donor shall be permitted to wash his or her hands. The collector shall inspect the toilet bowl and room or stall in which the donor voided to identify any evidence of a subversion attempt, and then flush the toilet.

§ 26.109 Urine specimen quantity.

(a) Licensees and other entities who are subject to this part shall establish a predetermined quantity of urine that donors are requested to provide when submitting a specimen. At a minimum, the predetermined quantity must include 30 milliliters (mL) to ensure that a sufficient quantity of urine is available for initial and confirmatory validity and drug tests at an HHS-certified laboratory, and for retesting of an aliquot of the specimen if requested by the donor in accordance with § 26.165(b). The licensee's or other entity's predetermined quantity may include more than 30 mL, if the testing program follows split specimen procedures, tests for additional drugs, or performs initial testing at a licensee testing facility. Where collected specimens are to be split under the provisions of this part, the predetermined quantity must include an additional 15 mL.

(b) If the quantity of urine in the first specimen provided by the donor is less than 30 mL, the collector shall take the following steps:

(1) The collector shall encourage the donor to drink a reasonable amount of liquid (normally, 8 ounces of water every 30 minutes, but not to exceed a maximum of 24 oz. over 3 hours) until the donor provides a specimen containing at least 30 mL. The collector shall provide the donor with a separate collection container for each successive specimen;

(2) Once the donor provides a specimen of at least 30 mL, the collection must end. If the specimen is at least 30 mL but is less than the licensee's or other entity's predetermined quantity, the licensee or other entity may not require the donor to provide additional specimens and may not impose any sanctions on the donor. If the donor provides a specimen of 30 mL or more, but the specimen is less than the predetermined quantity, the collector shall forward the specimen to the HHS-certified laboratory for testing. If the donor provides a specimen of at least the predetermined quantity, the specimen may be processed in accordance with the FFD program's usual testing procedures;

(3) If the donor has not provided a specimen of at least 30 mL within 3 hours of the first unsuccessful attempt to provide a specimen of the predetermined quantity, the collector shall discontinue the collection and notify the FFD program manager or MRO to initiate the ''shy bladder'' procedures in § 26.119; and

(4) Neither the donor nor the collector may combine specimens. The collector shall discard specimens of less than 30 mL, except if there is reason to believe that the donor has diluted, adulterated, substituted, or otherwise tampered with the specimen, based upon the collector's observations of the donor's behavior during the collection process or the

specimen's characteristics, as specified in § 26.111. If the collector has a reason to believe that a specimen that is 15 mL or more, but less than 30 mL, has been diluted, adulterated, substituted, or altered, the collector shall prepare the suspect specimen for shipping to the HHS-certified laboratory and contact FFD program management to determine whether a directly observed collection is required, as described in § 26.115.

§ 26.111 Checking the validity of the urine specimen.

(a) Immediately after the donor provides the urine specimen to the collector, including specimens of less than 30 mL but greater than 15 mL, the collector shall measure the temperature of the specimen. The temperature-measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement may not exceed 4 minutes, and may need to be less if the ambient temperature is low or the specimen quantity is less than 30 mL.

(b) If the temperature of a urine specimen is outside the range of 90 °F to 100 °F, the collector shall inform the donor that he or she may volunteer to have his or her temperature taken to provide evidence to counter the reason to believe the donor may have altered or substituted the specimen.

(c) Immediately after the donor provides a urine specimen, including specimens of less than 30 mL but greater than 15 mL, the collector shall also inspect the specimen to determine its color and clarity and look for any signs of contaminants or adulteration. The collector shall note any unusual findings on the custody-and-control form.

(d) If there is reason to believe that the donor may have attempted to dilute, substitute, or adulterate the specimen based upon specimen temperature or other observations made during the collection, the collector shall contact the designated FFD program manager, who may consult with the MRO, to determine whether the donor has attempted to subvert the testing process or whether other circumstances may explain the observations. The FFD program manager or MRO may require the donor to provide a second specimen as soon as possible, including under direct observation.

(e) Any specimen of 15 mL or more that the collector suspects has been diluted, substituted, or adulterated must be sent directly to the HHS-certified laboratory for initial and confirmatory testing, if required, and may not be subject to initial testing at a licensee testing facility.

(f) As much of the suspect specimen as possible must be preserved.

(g) An acceptable specimen is free of any apparent contaminants, meets the required basic quantity of at least 30 mL, and is within the acceptable temperature range.

§ 26.113 Splitting the urine specimen.

(a) Licensees and other entities who are subject to this part may, but are not required to, use split-specimen methods of collection.

(b) If the urine specimen is to be split into two specimen bottles, hereinafter referred to as Bottle A and Bottle B, the collector shall take the following steps:

(1) The collector shall instruct the donor to urinate into either a specimen bottle or a specimen container;

(2) The collector, in the presence of the donor and after determining specimen temperature as described in § 26.111(a), shall split the urine specimen. Bottle A must contain a minimum of 30 mL of urine and Bottle B must contain 15 mL. The Bottle A specimen must be used for drug and validity testing at the HHS-certified laboratory. If there is less than 15 mL of urine available for Bottle B, the specimen in Bottle A must nevertheless be processed for testing; and

(3) The collector shall ask the donor to observe the splitting of the urine specimen and to maintain visual contact with both specimen bottles until the custody-and-control form(s) for both specimens are completed, the specimens are sealed, and the specimens and form(s) are prepared for secure storage or shipping.

(c) Licensees and other entities may use aliquots of the specimen collected for validity screening and initial validity and drug testing at the licensee testing facility, as permitted under § 26.31(d)(3)(ii), or to test for additional drugs, as permitted under § 26.31(d)(1)(i)(A), but only if sufficient urine is available for such testing after the specimen has been split into Bottle A and Bottle B.

§ 26.115 Collecting a urine specimen under direct observation.

(a) Procedures for collecting urine specimens must provide for the donor's privacy unless directed by this part or the MRO or FFD program manager determines that a directly observed collection is warranted. The following circumstances constitute the exclusive grounds for performing a directly observed collection:

(1) The donor has presented, at this or a previous collection, a urine specimen that the HHS-certified laboratory reported as being substituted, adulterated, or invalid to the MRO and the MRO reported to the licensee or other entity that there is no adequate medical explanation for the result;

(2) The donor has presented, at this collection, a urine specimen that falls outside the required temperature range, and

(i) Either the donor declines to provide a measurement of body temperature; or

(ii) The donor's measured body temperature varies by more than 1EC/1.8EF from the temperature of the specimen;

(3) The collector observes conduct clearly and unequivocally indicating an attempt to dilute, substitute, or adulterate the specimen; and

(4) A directly observed collection is required under § 26.69.

(b) Before collecting a urine specimen under direct observation, the collector shall obtain the agreement of the FFD program manager or MRO to obtain a urine specimen under direct observation. After obtaining agreement, the collector shall ensure that a specimen is collected under direct observation as soon as reasonably practicable.

(c) The collector shall explain to the donor the reason for direct observation of the collection under paragraph (a) of this section.

(d) The collector shall complete a new custody-and-control form for the specimen that is obtained from the directly observed collection. The collector shall record that the collection was observed and the reason(s) for the directly observed collection on the form.

(e) The collector shall ensure that the observer is the same gender as the individual. A person of the opposite gender may not act as the observer under any conditions. The observer may be a different person from the collector and need not be a qualified collector.

(f) If someone other than the collector is to observe the collection, the collector shall verbally instruct the observer to follow the procedures in this paragraph. The individual who observes the collection shall follow these procedures:

(1) The observer shall instruct the donor to adjust his or her clothing to ensure that the area of the donor's body between the waist and knees is exposed;

(2) The observer shall watch the donor urinate into the collection container. Specifically, the observer shall watch the urine go from the donor's body into the collection container;

(3) If the observer is not the collector, the observer may not take the collection

container from the donor, but shall observe the specimen as the donor takes it to the collector; and

(4) If the observer is not the collector, the collector shall record the observer's name on the custody-and-control form.

(g) If a donor declines to allow a directly observed collection that is required or permitted under this section, this constitutes a refusal to test.

(h) If a collector learns that a directly observed collection should have been performed but was not, the collector shall inform the FFD program manager, or his or her designee. The FFD program manager or designee shall ensure that a directly observed collection is immediately performed.

§ 26.117 Preparing urine specimens for storage and shipping.

(a) Both the donor and the collector shall keep the donor's urine specimen(s) in view at all times before the specimen(s) are sealed and labeled. If any specimen or aliquot is transferred to another container, the collector shall ask the donor to observe the transfer and sealing of the container with a tamper-evident seal.

(b) Both the collector and the donor shall be present (at the same time) during the procedures outlined in this section.

(c) The collector shall place an identification label securely on each container. The label must contain the date, the donor's specimen number, and any other identifying information provided or required by the FFD program. The collector shall also apply a tamper-evident seal on each container if it is separate from the label. The specimen bottle must be securely sealed to prevent undetected tampering.

(d) The donor shall initial the identification label(s) on the specimen bottle(s) for the purpose of certifying that the specimen was collected from him or her. The collector shall also ask the donor to read and sign a statement on the custody-and-control form certifying that the specimen(s) identified as having been collected from the donor is, in fact, the specimen(s) that he or she provided.

(e) The collector shall complete the custody-and-control form(s) and shall certify proper completion of the collection.

(f) The specimens and chain-of-custody forms must be packaged for transfer to the HHS-certified laboratory or the licensee's testing facility. If the specimens are not immediately prepared for transfer, they must be appropriately safeguarded during temporary storage.

(g) While any part of the chain-of-custody procedures is being performed, the specimens and custody documents must be under the control of the involved collector. The collector may not leave the collection site during the interval between presentation of the specimen by the donor and securing of the specimens with identifying labels bearing the donor's specimen identification numbers and seals initialed by the donor. If the involved collector momentarily leaves his or her workstation, the sealed specimens and custody-and-control forms must be secured or taken with him or her. If the collector is leaving for an extended period of time, the specimens must be packaged for transfer to the HHS-certified laboratory or the licensee testing facility and secured before the collector leaves the collection site.

(h) The specimen(s) sealed in a shipping container must be immediately transferred, appropriately safeguarded during temporary storage, or kept under the personal control of an authorized individual until transferred. These minimum procedures apply to the transfer of specimens to licensee testing facilities from collection sites (except where co-located) as well as to the shipping of specimens to HHS-certified laboratories. As an option, licensees and other entities may ship several specimens via courier in a locked or sealed shipping container.

(i) Collection site personnel shall ensure that a custody-and-control form is packaged with its associated urine specimen bottle. Unless a collection site and a licensee testing facility are co-located, the sealed and labeled specimen bottles, with their associated custody-and-control forms that are being transferred from the collection site to the drug testing laboratory must be placed in a second, tamper-evident shipping container. The second container must be designed to minimize the possibility of damage to the specimen during shipment (*e.g.*, specimen boxes, shipping bags, padded mailers, or bulk insulated shipping containers with that capability), so that the contents of the shipping containers are no longer accessible without breaking a tamper-evident seal.

(j) Collection site personnel shall arrange to transfer the collected specimens to the HHS-certified laboratory or the licensee testing facility. Licensees and other entities shall take appropriate and prudent actions to minimize false negative results from specimen degradation. Specimens that have not been shipped to the HHS-certified laboratory or the licensee testing facility within 24 hours of collection and any specimen that is suspected of having been substituted, adulterated, or tampered with in any way must be maintained cooled to not more than 6 °C (42.8 °F) until they are shipped to the HHS-certified laboratory. Specimens must be shipped from the collection site to the HHS-certified laboratory or the licensee testing facility as soon as reasonably practical but, except under unusual circumstances, the time between specimen shipment and receipt of the specimen at the licensee testing facility or HHS-certified laboratory should not exceed 2 business days.

(k) Couriers, express carriers, and postal service personnel do not have direct access to the custody-and-control forms or the specimen bottles. Therefore, there is no requirement that such personnel document chain of custody on the custody-and-control forms during transit. Custody accountability of the shipping containers during shipment must be maintained by a tracking system provided by the courier, express carrier, or postal service.

§ 26.119 Determining "shy" bladder.

(a) When a donor has not provided a specimen of at least 30 mL within the 3 hours permitted for urine collection, FFD program personnel shall direct the donor to obtain, within 5 business days, an evaluation from a licensed physician who is acceptable to the MRO and has expertise in the medical issues raised by the donor's failure to provide a sufficient specimen. The MRO may perform this evaluation if the MRO has the appropriate expertise.

(b) If another physician will perform the evaluation, the MRO shall provide the other physician with the following information and instructions:

(1) The donor was required to take a drug test, but was unable to provide a sufficient quantity of urine to complete the test;

(2) The potential consequences of refusing to take the required drug test; and

(3) The physician must agree to follow the requirements of paragraphs (c) through (f) of this section.

(c) The physician who conducts this evaluation shall make one of the following determinations:

(1) A medical condition has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine; or

(2) There is an inadequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the donor from providing a sufficient quantity of urine.

(d) For purposes of this section, a medical condition includes an ascertainable physiological condition (*e.g.*, a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of ''situational anxiety'' or dehydration.

(e) The physician who conducts this evaluation shall provide a written statement of his or her determination and the basis for it to the MRO. This statement may not include detailed information on the donor's medical condition beyond what is necessary to explain the determination.

(f) If the physician who conducts this evaluation determines that the donor's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the donor from providing a sufficient amount of urine for a very long or indefinite period of time, the physician shall set forth this determination and the reasons for it in the written statement to the MRO.

(g) The MRO shall seriously consider and assess the information provided by the physician in deciding whether the donor has a medical condition that has, or with a high degree of probability could have, precluded the donor from providing a sufficient amount of urine, as follows:

(1) If the MRO concurs with the physician's determination, then the MRO shall declare that the donor has not violated the FFD policy and the licensee or other entity shall take no further action with respect to the donor;

(2) If the MRO determines that the medical condition has not, or with a high degree of probability could not have, precluded the donor from providing a sufficient amount of urine, then the MRO shall declare that there has been a refusal to test; or

(3) If the MRO determines that the medical condition is highly likely to prevent the donor from providing a sufficient amount of urine for a very long or indefinite period of time, then the MRO shall authorize an alternative evaluation process, tailored to the individual case, for drug testing.

Subpart F—Licensee Testing Facilities

§ 26.121 Purpose.

This subpart contains requirements for facilities that are operated by licensees and other entities who are subject to this part to perform initial tests of urine specimens for validity, drugs, and drug metabolites.

§ 26.123 Testing facility capabilities.

Each licensee testing facility shall have the capability, at the same premises, to perform either validity screening tests or initial validity tests or both, and initial drug tests for each drug and drug metabolite for which testing is conducted.

§ 26.125 Licensee testing facility personnel.

(a) Each licensee testing facility shall have one or more individuals who are responsible for day-to-day operations and supervision of the testing technicians. The designated individual(s) shall have at least a bachelor's degree in the chemical or biological sciences, medical technology, or equivalent. He or she shall also have training and experience in the theory and practice of the procedures used in the licensee testing facility, and a thorough understanding of quality control practices and procedures, the review, interpretation, and reporting of test results, and proper remedial actions to be taken in response to detection of abnormal test or quality control results.

(b) Other technicians or non-technical staff shall have the necessary training and skills for their assigned tasks. Technicians who perform urine specimen testing shall have documented proficiency in operating the testing instruments and devices used at the licensee testing facility.

(c) Licensee testing facility personnel files must include each individual's resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluations and advancement; incident reports, if any; results of tests that establish employee competency for the position he or she holds; and appropriate data to support determinations of honesty and integrity conducted in accordance with this part.

§ 26.127 Procedures.

(a) Licensee testing facilities shall develop, implement, and maintain clear and well-documented procedures for accession, shipment, and testing of urine specimens.

(b) Written chain-of-custody procedures must describe the methods to be used to maintain control and accountability of specimens from receipt through completion of testing and reporting of results, during storage and shipping to the HHS-certified laboratory, and continuing until final disposition of the specimens.

(c) Licensee testing facilities shall develop, implement, and maintain written standard operating procedures for each assay performed for drug and specimen validity testing. If a licensee testing facility performs validity screening tests with non-instrumented devices, the licensee testing facility shall develop, implement, and maintain written standard operating procedures for each device. The procedures must include, but are not limited to, detailed descriptions of—

(1) The principles of each test;

(2) Preparation of reagents, standards, and controls;

(3) Calibration procedures;

(4) Derivation of results;

(5) Linearity of the methods;

(6) Sensitivity of the methods;

(7) Cutoff values;

(8) Mechanisms for reporting results;

(9) Controls;

(10) Criteria for unacceptable specimens and results;

(11) Reagents and expiration dates; and

(12) References.

(d) Licensee testing facilities shall develop, implement, and maintain written procedures for instrument and device setup and normal operation, including the following:

(1) A schedule for checking critical operating characteristics for all instruments and devices;

(2) Tolerance limits for acceptable function checks; and

(3) Instructions for major troubleshooting and repair.

(e) Licensee testing facilities shall develop, implement, and maintain written procedures for remedial actions to be taken when systems and non-instrumented testing devices (if used for validity screening tests) are out of acceptable limits or errors are detected. Each facility shall maintain documentation that these procedures are followed and that all necessary corrective actions are taken. In addition, each facility shall have systems in place to verify all stages of testing and reporting and to document the verification.

§ 26.129 Assuring specimen security, chain of custody, and preservation.

(a) Each licensee testing facility shall be secure at all times. Each facility shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the licensee testing facility's processes or areas where records are stored. Access to these secured areas must be limited to specifically authorized individuals whose authorization is documented. All authorized visitors and maintenance and service personnel shall be escorted at all times while in the licensee testing facility.

(b) When specimens are received, licensee testing facility personnel shall

inspect each package for evidence of possible tampering and shall compare information on specimen containers within each package to the information on the accompanying custody-and-control forms. Licensee testing facility personnel shall attempt to resolve any discrepancies identified in the information on specimen bottles or on the accompanying custody-and-control forms. Indications of tampering with specimens in transit from the collection site, or at a licensee testing facility, must be reported to senior licensee or other entity management as soon as practical and no later than 8 hours after the indications are identified. In response to such reports, licensee or other entity management personnel shall initiate an investigation to determine whether tampering has occurred. If the investigation determines that tampering has occurred, licensee or other entity management shall ensure that corrective actions are taken. If there is reason to believe that the integrity or identity of a specimen is in question (as a result of tampering or discrepancies between the information on specimen bottle and on the accompanying custody-and-control forms that cannot be resolved), the specimen may not be tested and the licensee or other entity shall ensure that another collection occurs as soon as reasonably practical.

(c) The licensee testing facility shall retain specimen containers within the testing facility's accession area until all analyses have been completed. Testing facility personnel shall use aliquots of the specimen and licensee testing facility chain-of-custody forms, or other appropriate methods of tracking aliquot custody and control, when conducting validity screening and initial validity and drug tests. The original specimen bottles and the original custody-and-control forms must remain in secure storage. Licensee testing facility personnel may discard specimens and aliquots as soon as practical after validity screening or initial validity tests have demonstrated that the specimen appears valid and initial test results for drugs and drug metabolites are negative.

(d) The licensee testing facility's procedure for tracking custody and control of specimens and aliquots must protect the identity of the donor, and provide documentation of the testing process and transfers of custody of the specimen and aliquots. Each time a specimen or aliquot is handled or transferred within the licensee testing facility, testing facility personnel shall document the date and purpose and every individual in the chain of custody must be identified.

(e) Urine specimens identified as non-negative at a licensee testing facility must be shipped to an HHS-certified laboratory for testing as soon as reasonably practical.

(f) Licensee testing facility personnel shall take appropriate and prudent actions to minimize false negative results from specimen degradation. If validity screening, initial validity, or initial drug test results are non-negative or if a specimen has not been tested within 24 hours of receipt at the licensee testing facility, then the facility shall maintain the specimen cooled to not more than 6 °C (42.8 °F) until it is forwarded to the HHS-certified laboratory for further testing, if required. Split specimens in Bottle B that are associated with non-negative specimens in Bottle A must also be maintained cooled (as previously specified) until test results from the HHS-certified laboratory are known to be negative for Bottle A; until the MRO informs the licensee testing facility that Bottle B must be forwarded to an HHS-certified laboratory for testing; or until the specimen is moved to long-term, frozen storage, in accordance with § 26.135(c).

(g) Licensee testing facility personnel shall ensure that the original custody-and-control form is packaged with its associated urine specimen bottle. Sealed and labeled specimen bottles, with their associated custody-and-control forms, being transferred from the licensee testing facility to the HHS-certified laboratory must be placed in a second, tamper-evident shipping container designed to minimize the possibility of damage to the specimen during shipment (*e.g.*, specimen boxes, padded mailers, or bulk insulated shipping containers with that capability) so that the contents of the shipping containers are no longer accessible without breaking a tamper-evident seal.

(h) Couriers, express carriers, and postal service personnel do not have direct access to the custody-and-control forms or the specimen bottles. Therefore, such personnel are not required to document chain of custody on the custody-and-control forms during transit. Custody accountability of the shipping containers during shipment must be maintained by a tracking system provided by the courier, express carrier, or postal service.

§ 26.131 Cutoff levels for validity screening and initial validity tests.

(a) Each validity test result from the licensee testing facility must be based on performing either a validity screening test or an initial validity test, or both, on one or more aliquots of a urine specimen. The licensee testing facility shall forward any specimen that yields a non-negative validity screening or initial validity test result to the HHS-certified laboratory for further testing. Licensee testing facilities need not perform validity screening tests before conducting initial validity tests of a specimen.

(b) At a minimum, the licensee testing facility shall test each urine specimen for creatinine, pH, and one or more oxidizing adulterants. Licensees and other entities may not specify more stringent cutoff levels for validity screening and initial validity tests than those specified in this section. If tests or observations indicate one or more of the following from either a validity screening test or an initial validity test, the licensee testing facility shall forward the specimen to the HHS-certified laboratory for additional testing:

(1) Creatinine is less than 20 milligrams (mg) per deciliter (dL);

(2) Using either a colorimetric pH test or pH meter, the pH of the specimen meets either of the following criteria:

(i) pH less than 3, or

(ii) pH equal to or greater than 9.

(3) Nitrite concentration is equal to or greater than 500 micrograms (mcg) per milliliter (mL) using either a nitrite colorimetric test or a general oxidant colorimetric test;

(4) Presence of chromium (VI) is indicated using either a general oxidant colorimetric test (with a cutoff equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL);

(5) Presence of halogen (*e.g.*, bleach, iodine, fluoride) is indicated using either a general oxidant colorimetric test (with a cutoff equal to or greater than 200 mcg/mL nitrite equivalents or equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a halogen colorimetric test (halogen concentration equal to or greater than the LOD);

(6) Presence of glutaraldehyde is indicated using either an aldehyde test (aldehyde present) or the characteristic immunoassay response is observed on one or more drug immunoassay tests;

(7) Presence of pyridine (pyridinium chlorochromate) is indicated using either a general oxidant colorimetric test (with a cutoff equal to or greater than 200 mcg/mL nitrite equivalents or equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL);

(8) Presence of a surfactant is indicated by using a surfactant colorimetric test with a cutoff equal to

or greater than 100 mcg/mL dodecylbenzene sulfonate equivalent; or

(9) The specimen shows evidence of adulterants, including, but not limited to, the following:

(i) Abnormal physical characteristics;

(ii) Reactions or responses characteristic of an adulterant obtained during the initial test; or

(iii) A possible unidentified interfering substance or adulterant, demonstrated by interference occurring on the immunoassay drug tests on separate aliquots (*i.e.*, valid immunoassay drug test results cannot be obtained).

§ 26.133 Cutoff levels for drugs and drug metabolites.

Subject to the provisions of § 26.31(d)(3)(iii), licensees and other entities may specify more stringent cutoff levels for drugs and drug metabolites than those in the table below and, in such cases, may report initial test results for only the more stringent cutoff levels. Otherwise, the following cutoff levels must be used for initial testing of urine specimens to determine whether they are negative for the indicated drugs and drug metabolites:

INITIAL TEST CUTOFF LEVELS FOR DRUGS AND DRUG METABOLITES

Drug or metabolites	Cutoff level (ng/mL)
(a) Marijuana metabolites	50
(b) Cocaine metabolites	300
(c) Opiate metabolites	2,000
(d) Phencyclidine	25
(e) Amphetamines	1,000

§ 26.135 Split specimens.

(a) If the FFD program follows split-specimen procedures, as described in § 26.113, the licensee testing facility shall analyze aliquots of the specimen for the licensee's or other entity's purposes as described in this part. Except as provided in paragraph (b) in this section, the licensee testing facility shall store Bottles A and B of the specimen in a secure manner until the facility has finished testing. If the initial validity and drug test results are negative and the specimen in Bottle A will not be forwarded to the HHS-certified laboratory, the licensee testing facility may discard both Bottle A and B. If any test results are non-negative, the licensee testing facility shall forward Bottle A to the HHS-certified laboratory for testing and shall retain Bottle B in secure storage or may forward it to the HHS-certified laboratory for storage.

(b) Within 3 business days (Monday through Friday, excluding holidays) of being notified by the MRO that the HHS-laboratory reported that donor's specimen yielded a non-negative test result, the donor may request that the split specimen in Bottle B be tested by another HHS-certified laboratory. The MRO shall inform the donor of this option, and the specimen in Bottle B may be tested only at the request of donor. When requested, the licensee or other entity shall ensure that Bottle B is forwarded to an HHS-certified laboratory other than the laboratory that tested the specimen in Bottle A as soon as practical, and not later than one business day following the day of the donor's request to have Bottle B tested. The donor shall provide his or her written permission for the testing of Bottle B and neither the licensee, MRO, NRC, nor any other entity may order testing of Bottle B without the donor's written permission.

(c) If the MRO confirms that the specimen in Bottle A is non-negative and the donor does not request that Bottle B be tested, the licensee or other entity shall ensure that Bottle B is maintained in long-term, frozen storage (−20 °C or less) for a minimum of 1 year. After the end of 1 year, the licensee or other entity may discard Bottle B, with the exception that the licensee testing facility shall retain any specimens under legal challenge, or as requested by the NRC, until the specimen is no longer needed.

§ 26.137 Quality assurance and quality control.

(a) *Quality assurance program.* Each licensee testing facility shall have a quality assurance program that encompasses all aspects of the testing process including, but not limited to, specimen acquisition, chain of custody, security, reporting of results, validity screening (if validity screening tests are performed), initial validity and drug testing, and validation of analytical procedures. Quality assurance procedures must be designed, implemented, and reviewed to monitor the conduct of each step of the process of validity testing and testing for drugs and drug metabolites.

(b) *Performance testing and quality control requirements for validity screening tests.* (1) Licensee testing facilities may rely upon non-instrumented devices to perform validity screening tests to determine the need for initial tests of specimen validity. Licensee testing facilities shall use only non-instrumented devices to perform validity screening tests that meet the following criteria:

(i) Either the device has been cleared by the U.S. Food and Drug Administration and placed upon the SAMHSA list of point-of-collection testing devices that are certified for use in the Federal Workplace Drug Testing Program in the **Federal Register**; or

(ii) Before using the device, the licensee or other entity has ensured that the device effectively determines the validity of a specimen, as demonstrated by documentation that the device meets the following performance testing requirements:

(A) A total of 100 devices in representative numbers from all currently available manufactured lots of the device have been performance tested by the licensee testing facility or an HHS-certified laboratory following the manufacturer-specified testing procedures;

(B) The performance testing samples used to test the 100 devices included samples with a nitrite concentration in the ranges of 650 mcg/mL–800 mcg/mL or 250 mcg/mL–400 mcg/mL; a creatinine concentration in the ranges of 5 mg/dL–20 mg/dL or 1 mg/dL–5 mg/dL; and pH in the ranges of 1–3 or 10–12; and

(C) Test results from the performance testing required in this paragraph show that the device correctly identified at least 80 percent of the total validity test challenges or correctly identified at least 80 percent of the challenges for a specific validity test, and did not report any sample as adulterated with a compound that was not present in the sample.

(iii) After the licensee testing facility has placed the device in service, the licensee or other entity shall verify either that the device remains on the SAMHSA-certified list, or that the device continues to effectively determine the validity of a specimen by conducting, or requesting the HHS-certified laboratory to conduct performance testing of 50 of the devices in representative numbers from all currently available manufactured lots of the device in accordance with the criteria specified in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(C) of this section. This performance testing must be performed at a nominal annual frequency.

(iv) In addition, the licensee or other entity shall ensure that the manufacturer informs the licensee or other entity of any design changes or alterations made to the device. If so informed, the licensee or other entity shall consult with the MRO or the HHS-certified laboratory to determine whether additional performance testing is required to ensure that the modified device continues to be effective. If the MRO or HHS-certified laboratory

recommends additional performance testing, the licensee or other entity shall ensure that it is completed in accordance with paragraph (b)(1)(iii) of this section.

(2) At the beginning of any 8-hour period during which the licensee testing facility will perform validity screening tests, licensee testing facility personnel shall test a minimum of 1 quality control sample that is negative for each specific validity test to be performed (*e.g.*, nitrites, chromium) during the 8-hour period, and 1 quality control sample that is non-negative for the specific validity test to be performed during the 8-hour period. The results of these tests must be correct before any donor specimens may be tested. If correct results are not obtained (*i.e.*, the device provided either false positive or false negative results), the licensee testing facility shall immediately stop using the device and conduct the investigation required in paragraph (f) of this section. If the incorrect result is a false negative result, licensees and other entities shall notify the NRC in accordance with § 26.219(c)(3).

(3) The licensee testing facility shall also submit at least 1 specimen out of every 10 specimens that test negative using the non-instrumented validity screening device to an HHS-certified laboratory as part of the licensee testing facility's quality assurance program. If results from the HHS-certified laboratory indicate that a device failed to perform correctly (*i.e.*, provided either false positive or false negative results), the licensee or other entity shall immediately stop using the device and conduct the investigation required in paragraph (f) of this section. If the incorrect result is a false negative result, licensees and other entities shall notify the NRC in accordance with § 26.219(c)(3).

(4) Validity screening tests must measure a specimen's creatinine concentration to 1 decimal place.

(5) Dipsticks, colorimetric pH tests that have a narrow dynamic range and do not support the 2–12 pH cutoffs, and pH paper may be used only for validity screening tests to determine whether initial validity tests must be performed. The pH screening tests must have, at a minimum, the following controls:

(i) One control below the lower decision point in use;

(ii) One control between the decision points in use; and

(iii) One control above the upper decision point in use.

(6) Licensee testing facilities may use either a general oxidizing adulterant test or one or more specific oxidizing adulterant tests for validity screening tests. When a general oxidizing adulterant test is used, the test must be able to detect at least the activity equivalent of 500 mcg/mL of nitrite. Dipsticks that meet the performance testing requirements in paragraph (b)(1) through (b)(3) of this section may be used to determine the presence of nitrite or other oxidizing adulterants at a concentration sufficient to require initial validity testing.

(c) *Non-negative validity screening test results.* If the results of a validity screening test indicate that the specimen may be adulterated, substituted, dilute, or invalid, the licensee testing facility may either perform initial validity testing or shall forward the specimen to the HHS-certified laboratory for further testing.

(d) *Quality control requirements for performing initial validity tests.*

(1) Creatinine. Creatinine concentration must be measured to 1 decimal place. The initial creatinine test must have a control in the range of 3–20 mg/dL and a control in the range of 21–25 mg/dL.

(2) Requirements for performing initial pH tests are as follows:

(i) Colorimetric pH tests that have a dynamic range of 2–12 and pH meters must be capable of measuring pH to 1 decimal place.

(ii) An initial colorimetric pH test must have the following calibrators and controls:

(A) One calibrator at 3;

(B) One calibrator at 11;

(C) One control in the range of 2–2.8;

(D) One control in the range of 3.2–4;

(E) One control in the range of 4.5–9;

(F) One control in the range of 10–10.8; and

(G) One control in the range of 11.2–12.

(iii) If a pH screening test is not used, an initial pH meter test must have the following calibrators and controls:

(A) One calibrator at 4;

(B) One calibrator at 7;

(C) One calibrator at 10;

(D) One control in the range of 2–2.8;

(E) One control in the range of 3.2–4;

(F) One control in the range of 10–10.8; and

(G) One control in the range of 11.2–12.

(iv) If a pH screening test is used, an initial pH meter test must have the following calibrators and controls when the screening result indicates that the pH is below the lower decision point in use:

(A) One calibrator at 4;

(B) One calibrator at 7;

(C) One control in the range of 2–2.8; and

(D) One control in the range of 3.2–4.

(v) If a pH screening test is used, an initial pH meter test must have the following calibrators and controls when the screening test result indicates that the pH is above the upper decision point in use:

(A) One calibrator at 7;

(B) One calibrator at 10;

(C) One control in the range of 10–10.8; and

(D) One control in the range of 11.2–12.

(3) Oxidizing adulterants. Initial tests for oxidizing adulterants must include a calibrator at the appropriate cutoff concentration for the compound of interest, a control without the compound of interest (*i.e.*, a certified negative control), and a control with at least one of the compounds of interest at a measurable concentration. For nitrite, the licensee testing facility shall have one control in the range of 200–400 mcg/mL, one control in the range of 500–625 mcg/mL, and a control without nitrite (*i.e.*, a certified negative control).

(4) Other adulterants. Initial tests for other adulterants must include an appropriate calibrator, a control without the compound of interest (*i.e.*, a certified negative control), and a control with the compound of interest at a measurable concentration.

(e) *Quality control requirements for initial drug tests.* (1) Any initial drug test performed by a licensee testing facility must use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. Licensee testing facilities may not use non-instrumented immunoassay testing devices that are pending HHS/SAMHSA review and approval for initial drug testing under this part. In addition, licensees and other entities may not take management actions on the basis of any drug test results obtained from non-instrumented devices that may be used for validity screening tests.

(2) Licensee testing facilities shall discard negative specimens or may pool them for use in the licensee testing facility's internal quality control program after certification by an HHS-certified laboratory that the specimens are negative and valid.

(3) Licensee testing facilities may perform multiple initial drug tests for the same drug or drug class, provided that all tests meet the cutoffs and quality control requirements of this part.

(4) Licensee testing facilities need not assess their false positive testing rates for drugs, because all specimens that test as positive on the initial tests for drugs and drug metabolites must be

forwarded to an HHS-certified laboratory for initial and confirmatory testing.

(5) To ensure that the rate of false negative drug tests is kept to the minimum that the immunoassay technology supports, licensee testing facilities shall submit a minimum of 5 percent (or at least 1) of the specimens screened as negative from every analytical run to the HHS-certified laboratory.

(6) Quality control samples for each analytical run of specimens to be initially tested for drugs by the licensee testing facility must include—

(i) Sample(s) certified to contain no drug (*i.e.*, negative urine samples);

(ii) At least one control fortified with a drug or drug metabolite targeted at 25 percent above the cutoff;

(iii) At least one control fortified with a drug or drug metabolite targeted at 75 percent of the cutoff.

(7) A minimum of 10 percent of all specimens in each analytical run must be quality control samples, as defined in paragraph (e)(6) of this section, that the licensee testing facility shall use for internal quality control purposes. One percent of each run or at least 1 sample (whichever is greater), must be blind performance test samples that appear as normal samples to the licensee testing facility technicians. Quality control samples are not forwarded to the HHS-certified laboratory for testing.

(8) Licensee testing facilities shall document the implementation of procedures to ensure that carryover does not contaminate the testing of a donor's specimen.

(f) *Errors in testing.* Each licensee testing facility shall investigate any testing errors or unsatisfactory performance discovered in the testing of quality control samples, in the testing of actual specimens, or through the processing of management reviews and/or MRO reviews, as well as any other errors or matters that could adversely reflect on the licensee testing facility's testing process. Whenever possible, the investigation must determine relevant facts and identify the root cause(s) of the testing or process error. The licensee testing facility shall take action to correct the cause(s) of any errors or unsatisfactory performance that are within the licensee testing facility's control. A record of the investigative findings and the corrective actions taken, where applicable, must be dated and signed by the individuals who are responsible for the day-to-day management of the licensee testing facility and reported to appropriate levels of management.

(g) *Accuracy.* Volumetric pipettes and measuring devices must be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors must be checked for accuracy and reproducibility before being placed in service, and periodically thereafter.

(h) *Calibrators and controls.* Calibrators and controls must be prepared using pure drug reference materials, stock standard solutions obtained from other laboratories, or standard solutions that are obtained from commercial manufacturers and are properly labeled as to content and concentration. Calibrators and controls may not be prepared from the same stock solution. The standards and controls must be labeled with the following dates: when received; when prepared or opened; when placed in service; and when scheduled for expiration.

§ 26.139 Reporting initial validity and drug test results.

(a) The licensee testing facility shall report as negative all specimens that appear to be valid on the basis of validity screening or initial validity tests, or both, and are negative on the initial tests for drugs and drug metabolites. Except as provided in this part, non-negative test results from validity screening and initial validity and drug tests at the licensee testing facility may not be reported to licensee or other entity management.

(b) Except as provided in §§ 26.37 and 26.75(h), access to the results of initial tests must be limited to the licensee testing facility's staff, the MRO and MRO staff, the FFD program manager, and, when appropriate, EAP staff.

(c) The licensee testing facility shall provide qualified personnel, when required, to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on urinalysis results reported by the licensee testing facility.

(d) The licensee testing facility shall prepare the information required for the annual report to the NRC, as required in § 26.217.

(e) The data in the annual report to the NRC must be presented for either the cutoff levels specified in this part, or for more stringent cutoff levels, if the FFD program uses more stringent cutoff levels for drugs and drug metabolites. If the FFD program tests for drugs and drug metabolites that are not specified in § 26.31(d)(1), the summary must also include the number of positive test results and the cutoff levels used for those drugs and drug metabolites.

(f) The designated FFD program official shall use the available information from the licensee testing facility's validity and drug test results, the results of quality control testing performed at the licensee testing facility, and the results from testing the quality control samples that the licensee testing facility submits to the HHS-certified laboratory to evaluate continued testing program effectiveness and detect any local trends in drugs of abuse that may require management action or FFD program adjustments. FFD program adjustments may include, but are not limited to, training enhancements, procedure changes, the expansion of the FFD program's drug panel to include additional drugs to be tested, or changes in the types of validity and drug testing devices, assays, or instruments used.

Subpart G—Laboratories Certified by the Department of Health and Human Services

§ 26.151 Purpose.

This subpart contains requirements for the HHS-certified laboratories that licensees and other entities who are subject to this part use for testing urine specimens for validity and the presence of drugs and drug metabolites.

§ 26.153 Using certified laboratories for testing urine specimens.

(a) Licensees and other entities who are subject to this part shall use only HHS-certified laboratories for specimen validity and drug testing, except as permitted under § 26.31(d)(3)(ii).

(b) HHS-certified laboratories shall have the capability, at the same premises, to perform both initial and confirmatory tests for specimen validity and for each drug and drug metabolite for which the HHS-laboratory provides services to the licensee or other entity.

(c) An HHS-certified laboratory may not subcontract and shall perform all work with its own personnel and equipment unless otherwise authorized by the licensee or other entity.

(d) Licensees and other entities shall use only HHS-certified laboratories that agree to follow the same rigorous specimen testing, quality control, and chain-of-custody procedures when testing for more stringent cutoff levels as may be specified by licensees and other entities for the classes of drugs identified in this part, and for any other substances included in the licensees' or other entities' panels.

(e) Before awarding a contract to an HHS-certified laboratory, the licensee or other entity shall ensure that qualified personnel conduct a pre-award

inspection and evaluation of the procedural aspects of the laboratory's drug testing operations. However, if an HHS-certified laboratory loses its certification, in whole or in part, a licensee or other entity may immediately begin using another HHS-certified laboratory that is being used by another licensee or entity who is subject to this part, in accordance with the requirements of § 26.41(g)(5).

(f) All contracts between licensees or other entities who are subject to this part and HHS-certified laboratories must require the laboratory to implement all applicable requirements of this part. At a minimum, licensees' and other entities' contracts with HHS-certified laboratories must include the following requirements:

(1) Laboratory facilities shall comply with the applicable provisions of any State licensor requirements;

(2) The laboratory shall make available qualified personnel to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on urinalysis results reported by the HHS-certified laboratory;

(3) The laboratory shall maintain test records in confidence, consistent with the requirements of § 26.39, and use them with the highest regard for individual privacy;

(4) Consistent with the principles established in Section 503 of Public Law 100–71, any employee of a licensee or other entity who is the subject of a drug test shall, upon written request, have access to the laboratory's records related to his or her validity and drug test and any records related to the results of any relevant certification, review, or revocation-of-certification proceedings;

(5) The laboratory may not enter into any relationship with the licensee's or other entity's MRO(s) that may be construed as a potential conflict of interest, and may not derive any financial benefit by having a licensee or other entity use a specific MRO; and

(6) The laboratory shall permit representatives of the NRC and any licensee or other entity using the laboratory's services to inspect the laboratory at any time, including unannounced inspections.

(g) If licensees or other entities use a form other than the current Federal custody-and-control form, licensees and other entities shall provide a memorandum to the laboratory explaining why a non-Federal form was used, but must ensure, at a minimum, that the form used contains all the required information on the Federal custody-and-control form.

§ 26.155 Laboratory personnel.

(a) *Day-to-day management of the HHS-certified laboratory.* HHS–certified laboratories shall have a responsible person to assume professional, organizational, educational, and administrative responsibility for the laboratory's drug testing facilities.

(1) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are as follows:

(i) Certification by the appropriate State as a laboratory director in forensic or clinical laboratory toxicology; or

(ii) A PhD in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a PhD in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the responsible person shall also have the following minimum qualifications:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse; and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, *e.g.*, publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors that qualify the individual as an expert witness in forensic toxicology.

(2) This individual shall be engaged in and responsible for the day-to-day management of the testing laboratory, even if another individual has overall responsibility for an entire multi-specialty laboratory.

(3) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall ensure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(4) This individual shall be responsible for ensuring that the laboratory has procedures that are complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedures must be reviewed, signed, and dated by this responsible person whenever the procedures are first placed into use or changed or when a new individual assumes responsibility for management of the laboratory. This individual shall ensure that copies of all procedures and records of the dates on which they are in effect are maintained. (Specific contents of the procedures are described in § 26.157.)

(5) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; maintaining acceptable analytical performance for all controls and standards; maintaining quality control testing; and assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(6) This individual shall be responsible for taking all remedial actions that may be necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, including errors in result reporting or in the analysis of performance testing results. This individual shall ensure that test results are not reported until all corrective actions have been taken and he or she can assure that the test results provided are accurate and reliable.

(b) *Certifying scientist.* (1) HHS-certified laboratories shall have one or more certifying scientists who review all pertinent data and quality control results to attest to the validity of the laboratory's test results.

(2) A certifying scientist shall be an individual with at least a bachelor's degree in the chemical or biological sciences, medical technology, or an equivalent field who reviews all pertinent data and quality control results. The individual shall have training and experience in the theory and practice of all methods and procedures used in the laboratory, including a thorough understanding of chain-of-custody procedures, quality control practices, and analytical procedures relevant to the results that the individual certifies. Relevant training and experience must also include the review, interpretation, and reporting of tests results; maintenance of chain of custody; and proper remedial action to be taken in response to aberrant test or quality control results, or a determination that test systems are out of control limits.

(3) A laboratory may designate certifying scientists who only certify results that are reported negative and certifying scientists who certify results

that are reported both negative and non-negative.

(c) *Day-to-day operations and supervision of analysts.* HHS-certified laboratories shall assign one or more individuals who are responsible for day-to-day operations and supervision of the technical analysts. The designated individual(s) shall have at least a bachelor's degree in the chemical or biological sciences, medical technology, or an equivalent field. The individual(s) shall also have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; review, interpretation, and reporting of test results; maintenance of chain-of-custody; and proper remedial actions to be taken in response to aberrant test or quality control results, or the finding that test systems are out of control limits.

(d) *Other personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for their assigned tasks.

(e) *Training.* HHS-certified laboratories shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* At a minimum, each laboratory personnel file must include a resume, any professional certification(s) or license(s), a job description, and documentation to show that the individual has been properly trained to perform his or her job.

§ 26.157 Procedures.

(a) HHS-certified laboratories shall develop, implement, and maintain clear and well-documented procedures for accession, receipt, shipment, and testing of urine specimens.

(b) Written chain-of-custody procedures must describe the methods to be used to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage and shipping to another HHS-certified laboratory, if required, and continuing until final disposition of specimens.

(c) HHS-certified laboratories shall develop, implement, and maintain written standard operating procedures for each assay performed for licensees and other entities for drug and specimen validity testing. The procedures must include, but are not limited to, detailed descriptions of—

(1) The principles of each test;

(2) Preparation of reagents, standards, and controls;

(3) Calibration procedures;

(4) Derivation of results;

(5) Linearity of methods;

(6) Sensitivity of the methods;

(7) Cutoff values;

(8) Mechanisms for reporting results;

(9) Controls;

(10) Criteria for unacceptable specimens and results;

(11) Reagents and expiration dates; and

(12) References.

(d) HHS–certified laboratories shall develop, implement, and maintain written procedures for instrument setup and normal operation, including the following:

(1) A schedule for checking critical operating characteristics for all instruments;

(2) Tolerance limits for acceptable function checks; and

(3) Instructions for major troubleshooting and repair.

(e) HHS–certified laboratories shall develop, implement, and maintain written procedures for remedial actions to be taken when errors are detected or systems are out of acceptable limits. The laboratory shall maintain documentation that its personnel follow these procedures and take all necessary corrective actions. In addition, the laboratory shall have systems in place to verify all stages of testing and reporting and to document the verification.

§ 26.159 Assuring specimen security, chain of custody, and preservation.

(a) The HHS-certified laboratories performing services for licensees and other entities under this part shall be secure at all times. Each laboratory shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or areas where records are stored. Access to these secured areas must be limited to specially authorized individuals whose authorization is documented. All authorized visitors, and maintenance and service personnel, shall be escorted at all times in the laboratory, except personnel who are authorized to conduct inspections and audits on behalf of licensees, other entities, the NRC, or the Secretary of the Department of Health and Human Services, and emergency personnel (including but not limited to firefighters and medical rescue teams).

(b) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and shall compare information on specimen bottles within each package to the information on the accompanying custody-and-control forms. Any direct evidence of tampering or discrepancies in the information on the specimen bottles and the custody-and-control forms attached to the shipment must be reported to the licensee or other entity within 24 hours of the discovery and must be noted on the custody-and-control forms for each specimen contained in the package. Upon notification, the licensee or other entity shall ensure that an investigation is initiated to determine whether tampering has occurred. If the investigation determines that tampering has occurred, the licensee or other entity shall ensure that corrective actions are taken. If the licensee or other entity has reason to question the integrity and identity of the specimens, the specimens may not be tested and the licensee or other entity shall ensure that another collection occurs as soon as reasonably practical.

(c) The HHS-certified laboratory shall retain specimen bottles within the laboratory's accession area until all analyses have been completed. Laboratory personnel shall use aliquots and laboratory internal custody-and-control forms when conducting initial and confirmatory tests. The original specimen and the original custody-and-control form must remain in secure storage.

(d) The laboratory's internal custody-and-control form must allow for identification of the donor, and documentation of the testing process and transfers of custody of the specimen.

(e) Each time a specimen is handled or transferred within the laboratory, laboratory personnel shall document the date and purpose on the custody-and-control form and every individual in the chain shall be identified. Authorized technicians are responsible for each urine specimen or aliquot in their possession and shall sign and complete custody-and-control forms for those specimens or aliquots as they are received.

(f) If a specimen is to be transferred to a second HHS-certified laboratory, laboratory personnel shall ensure that the original custody-and-control form is packaged with its associated urine specimen bottle. Sealed and labeled specimen bottles, with their associated custody-and-control forms, being transferred from one laboratory to another must be placed in a second, tamper-evident shipping container designed to minimize the possibility of damage to the specimen during shipment (*e.g.*, specimen boxes, padded mailers, or bulk insulated shipping containers with that capability) so that the contents of the shipping containers

are inaccessible without breaking a tamper-evident seal.

(g) Couriers, express carriers, and postal service personnel do not have direct access to the custody-and-control forms or the specimen bottles. Therefore, such personnel are not required to document chain of custody on the custody-and-control forms during transit. Custody accountability of the shipping containers during shipment must be maintained by a tracking system provided the courier, express carrier, or postal service.

(h) Specimens that do not receive an initial test within 7 days of arrival at the laboratory must be placed in secure refrigeration units for short-term storage. Temperatures may not exceed 6 °C. The laboratory shall ensure proper storage conditions in the event of a prolonged power failure.

(i) Long-term frozen storage at a temperature of −20 °C or less ensures that drug-positive, adulterated, substituted, and invalid urine specimens and Bottle B of a split specimen will be available for any necessary retests. Unless otherwise authorized in writing by the licensee or other entity, laboratories shall retain and place in properly secured long-term frozen storage all specimens reported as drug positive, adulterated, substituted, or invalid. At a minimum, such specimens must be stored for 1 year. Within this 1-year period, a licensee, other entity, or the NRC may ask the laboratory to retain the specimen for an additional period of time. If no retention request is received, the laboratory may discard the specimen after the end of 1 year. However, the laboratory shall retain any specimens under review or legal challenge until they are no longer needed.

(j) The laboratory shall discard a valid specimen that tests negative on initial or confirmatory drug tests or may pool such specimens for use in the laboratory's internal quality control program after certifying that the specimens are negative and valid.

§ 26.161 Cutoff levels for validity testing.

(a) *Validity test results.* Each validity test result must be based on performing an initial validity test on one aliquot and a confirmatory validity test on a second aliquot.

(b) *Initial validity testing.* (1) The HHS-certified laboratory shall test each specimen as follows:

(i) Determine the creatinine concentration;

(ii) Determine the specific gravity of every specimen for which the creatinine concentration is less than 20 mg/dL;

(iii) Determine the pH;

(iv) Perform one or more initial validity tests for oxidizing adulterants; and

(v) Perform additional validity tests, the choice of which depends upon the observed indicators or characteristics below, when the following conditions are observed:

(A) Abnormal physical characteristics;

(B) Reactions or responses characteristic of an adulterant obtained during initial or confirmatory drug tests (*e.g.*, non-recovery of internal standards, unusual response); or

(C) Possible unidentified interfering substance or adulterant.

(2) If tests or observations indicate one or more of the following, there is reason to believe the donor may have diluted, substituted, or adulterated the specimen, and the laboratory shall subject the specimen to confirmatory validity testing:

(i) Creatinine is less than 20 mg/dL;

(ii) Using either a colorimetric pH test or pH meter, the pH of the specimen is found to meet any one of the following criteria:

(A) pH less than 3,

(B) pH equal to or greater than 11,

(C) pH equal to or greater than 3 and less than 4.5, or

(D) pH equal to or greater than 9 and less than 11;

(iii) The nitrite concentration is equal to or greater than 500 mcg/mL using either a nitrite colorimetric test or a general oxidant colorimetric test;

(iv) The presence of chromium (VI) is indicated using either a general oxidant colorimetric test (with a cutoff equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a chromium (VI) colorimetric test (chromium (VI) with a cutoff concentration equal to or greater than 50 mcg/mL);

(v) The presence of halogen (*e.g.*, bleach, iodine, fluoride) is indicated using either a general oxidant colorimetric test (with a cutoff equal to or greater than 200 mcg/mL nitrite equivalents or equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a halogen colorimetric test (halogen cutoff concentration equal to or greater than the LOD);

(vi) The presence of glutaraldehyde is indicated using either an aldehyde test (aldehyde present) or the characteristic immunoassay response is observed on one or more drug immunoassay tests;

(vii) The presence of pyridine (pyridinium chlorochromate) is indicated using either a general oxidant colorimetric test (with a cutoff equal to or greater than 200 mcg/mL nitrite equivalents or equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL);

(viii) The presence of a surfactant is indicated by using a surfactant colorimetric test with a cutoff equal to or greater than 100 mcg/mL dodecylbenzene sulfonate equivalent; or

(ix) The specimen provides evidence of adulterants, including, but not limited to the following:

(A) Abnormal physical characteristics,

(B) Reactions or responses characteristic of an adulterant obtained during the initial test, or

(C) Possible unidentified interfering substance or adulterant, demonstrated by interference occurring on the immunoassay drug tests on two separate aliquots (*i.e.*, valid immunoassay drug test results cannot be obtained).

(c) *Results indicating an adulterated specimen.* The laboratory shall report a specimen as adulterated when the specimen yields any one or more of the following validity testing results:

(1) The pH is less than 3, or equal to or greater than 11, using either a pH meter or a colorimetric pH test for the initial test on the first aliquot and a pH meter for the confirmatory test on the second aliquot;

(2) The nitrite concentration is equal to or greater than 500 mcg/mL using either a nitrite colorimetric test or a general oxidant colorimetric test for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, capillary electrophoresis) on the second aliquot;

(3) The presence of chromium (VI) is verified using either a general oxidant colorimetric test (with a cutoff equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL) for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, atomic absorption spectrophotometry, capillary electrophoresis, inductively coupled plasma-mass spectrometry) with the chromium (VI) concentration equal to or greater than the LOD of the confirmatory test on the second aliquot;

(4) The presence of halogen (*e.g.*, bleach, iodine, fluoride) is verified using either a general oxidant colorimetric test (with a cutoff equal to or greater than 200 mcg/mL nitrite equivalents or a cutoff equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a halogen colorimetric test (halogen concentration equal to or greater than the LOD) for the initial test on the first aliquot and a different

confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, inductively coupled plasma-mass spectrometry) with a specific halogen concentration equal to or greater than the LOD of the confirmatory test on the second aliquot;

(5) The presence of glutaraldehyde is verified using either an aldehyde test (aldehyde present) or the specimen yields the characteristic immunoassay response on one or more drug immunoassay tests for the initial test on the first aliquot and GC/MS for the confirmatory test with the glutaraldehyde concentration equal to or greater than the LOD of the analysis on the second aliquot;

(6) The presence of pyridine (pyridinium chlorochromate) is verified using either a general oxidant colorimetric test (with a cutoff equal to or greater than 200 mcg/mL nitrite equivalents or a cutoff equal to or greater than 50 mcg/mL chromium (VI) equivalents) or a chromium (VI) colorimetric test (chromium (VI) concentration equal to or greater than 50 mcg/mL) for the initial test on the first aliquot and GC/MS for the confirmatory test with the pyridine concentration equal to or greater than the LOD of the analysis on the second aliquot;

(7) The presence of a surfactant is verified by using a surfactant colorimetric test with a cutoff equal to or greater than 100 mcg/mL dodecylbenzene sulfonate equivalent for the initial test on the first aliquot and a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry) with a cutoff equal to or greater than 100 mcg/mL dodecylbenzene sulfonate equivalent on the second aliquot; or

(8) The presence of any other adulterant not specified in paragraphs (c)(3) through (c)(7) of this section is verified using an initial test on the first aliquot and a different confirmatory test on the second aliquot.

(d) *Results indicating a substituted specimen.* The laboratory shall report a specimen as substituted when the specimen's creatinine concentration is less than 2 mg/dL and its specific gravity is less than or equal to 1.0010, or equal to or greater than 1.0200, on both the initial and confirmatory creatinine tests (*i.e.*, the same colorimetric test may be used to test both aliquots) and on both the initial and confirmatory specific gravity tests (*i.e.*, a refractometer is used to test both aliquots) on two separate aliquots.

(e) *Results indicating a dilute specimen.* The laboratory shall report a specimen as dilute when the specimen's creatinine concentration is equal to or greater than 2 mg/dL but less than 20 mg/dL and its specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.

(f) *Results indicating an invalid specimen.* The laboratory shall report a specimen as invalid when the laboratory obtains any one or more of the following validity testing results:

(1) Inconsistent creatinine concentration and specific gravity results are obtained (*i.e.*, the creatinine concentration is less than 2 mg/dL on both the initial and confirmatory creatinine tests and the specific gravity is greater than 1.0010 but less than 1.0200 on the initial and/or confirmatory specific gravity test, the specific gravity is less than or equal to 1.0010 on both the initial and confirmatory specific gravity tests and the creatinine concentration is equal to or greater than 2 mg/dL on either or both the initial or confirmatory creatinine tests);

(2) The pH is equal to or greater than 3 and less than 4.5, or equal to or greater than 9 and less than 11, using either a colorimetric pH test or pH meter for the initial test and a pH meter for the confirmatory test on two separate aliquots;

(3) The nitrite concentration is equal to or greater than 200 mcg/mL using a nitrite colorimetric test, or equal to or greater than 200 mcg/mL nitrite equivalents using a general oxidant colorimetric test for both the initial test and the confirmatory test, or, using either initial test, the nitrite concentration is equal to or greater than 200 mcg/mL but less than 500 mcg/mL using a different confirmatory test (*e.g.*, multi-wavelength spectrophotometry, ion chromatography, capillary electrophoresis) on two separate aliquots;

(4) The possible presence of chromium (VI) is determined using the same chromium (VI) colorimetric test with a cutoff equal to or greater than 50 mcg/mL chromium (VI) for both the initial test and the confirmatory test on two separate aliquots;

(5) The possible presence of a halogen (*e.g.*, bleach, iodine, fluoride) is determined using the same halogen colorimetric test with a cutoff equal to or greater than the LOD for both the initial test and the confirmatory test on two separate aliquots or relying on the odor of the specimen as the initial test;

(6) The possible presence of glutaraldehyde is determined using the same aldehyde test (aldehyde present) or the characteristic immunoassay response is observed on one or more drug immunoassay tests for both the initial test and the confirmatory test on two separate aliquots;

(7) The possible presence of an oxidizing adulterant is determined by using the same general oxidant colorimetric test (with cutoffs equal to or greater than 200 mcg/mL nitrite equivalents, equal to or greater than 50 mcg/mL chromium (VI) equivalents, or a halogen concentration equal to or greater than the LOD) for both the initial test and the confirmatory test on two separate aliquots;

(8) The possible presence of a surfactant is determined using the same surfactant colorimetric test with a cutoff equal to or greater than 100 mcg/mL dodecylbenzene sulfonate equivalent for both the initial test and the confirmatory test on two separate aliquots or a foam/shake test for the initial test;

(9) Interference occurs on the immunoassay drug tests on two separate aliquots (*i.e.*, valid immunoassay drug test results cannot be obtained);

(10) Interference with the drug confirmation assay occurs on at least two separate aliquots of the specimen, and the laboratory is unable to identify the interfering substance;

(11) The physical appearance of the specimen indicates that testing may damage the laboratory's equipment; or

(12) The physical appearances of Bottles A and B (when a split specimen collection is used) are clearly different, and either the test result for Bottle A indicated it is an invalid specimen or the specimen in Bottle A was screened negative for drugs, or both.

(g) *Additional testing by a second laboratory.* If the presence of an interfering substance/adulterant is suspected that could make a test result invalid, but it cannot be identified (*e.g.*, a new adulterant), laboratory personnel shall consult with the licensee's or other entity's MRO and, with the MRO's agreement, shall send the specimen to another HHS-certified laboratory that has the capability to identify the suspected substance.

(h) *More stringent validity test cutoff levels are prohibited.* Licensees and other entities may not specify more stringent cutoff levels for validity tests than those specified in this section.

§ 26.163 Cutoff levels for drugs and drug metabolites.

(a) *Initial drug testing.* (1) HHS-certified laboratories shall apply the following cutoff levels for initial testing of specimens to determine whether they are negative for the indicated drugs and drug metabolites, except if validity testing indicates that the specimen is dilute or the licensee or other entity has established more stringent cutoff levels:

INITIAL TEST CUTOFF LEVELS FOR DRUGS AND DRUG METABOLITES

Drug or metabolites	Cutoff level (ng/mL)
(i) Marijuana metabolites	50
(ii) Cocaine metabolites	300
(iii) Opiate metabolites	2,000
(iv) Phencyclidine	25
(v) Amphetamines	1,000

(2) If confirmatory validity testing indicates that a specimen is dilute, the HHS-certified laboratory shall use analytical kits approved by the Food and Drug Administration that have the lowest concentration levels marketed for the technology(ies) being used to conduct initial testing of the specimen for drugs or drug metabolites. The laboratory shall compare the responses of the dilute specimen to the cutoff calibrator in each of the drug classes. If the response is within 50 percent of the cutoff, the HHS-certified laboratory shall inform the licensee's or other entity's MRO. At the licensee's or other entity's discretion, as documented in the FFD program policies and procedures, the MRO may direct the laboratory to test the specimen for drugs and/or drug metabolites down to the confirmatory assay's limit of detection (LOD). The laboratory shall report the results of the special analysis, if requested, to the MRO.

(b) *Confirmatory drug testing.* (1) A specimen that is identified as positive on an initial drug test must be subject to confirmatory testing for the class(es) of drugs for which the specimen initially tested positive. The HHS-certified laboratory shall apply the confirmatory cutoff levels specified in this paragraph, except if confirmatory validity testing indicates that the specimen is dilute or the licensee or other entity has established more stringent cutoff levels.

CONFIRMATORY TEST CUTOFF LEVELS FOR DRUGS AND DRUG METABOLITES

Drug or metabolites	Cutoff level (ng/mL)
(i) Marijuana metabolite [1]	15
(ii) Cocaine metabolite [2]	150
(iii) Opiates:	
(A) Morphine	2000
(B) Codeine	2000
(C) 6-acetylmorphine [3]	10
(iv) Phencyclidine	25
(v) Amphetamines:	
(A) Amphetamine	500
(B) Methamphetamine [4]	500

[1] As delta-9-tetrahydrocannabinol-9-carboxylic acid.

[2] As benzoylecgonine.

[3] Test for 6-AM when the confirmatory test shows a morphine concentration exceeding 2,000 ng/mL.

[4] Specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL.

(2) Each confirmatory drug test must provide a quantitative result. When the concentration of a drug or metabolite exceeds the linear range of the standard curve, the laboratory may record the result as ''exceeds the linear range of the test'' or as ''equal to or greater than <insert the value for the upper limit of the linear range>,'' or may dilute an aliquot of the specimen to obtain an accurate quantitative result when the concentration is above the upper limit of the linear range.

§ 26.165 Testing split specimens and retesting single specimens.

(a) *Split specimens.* (1) If a specimen has been split into Bottle A and Bottle B at the collection site, and the specimen was not initially tested at a licensee testing facility, then the HHS-certified laboratory shall perform initial and confirmatory validity and drug testing, if required, of the specimen in Bottle A.

(2) If a specimen was initially tested at a licensee testing facility and non-negative results were obtained, then the HHS-certified laboratory shall perform initial and confirmatory testing, if required, of the specimen in Bottle A.

(3) At the licensee's or other entity's discretion, Bottle B must either be forwarded to the laboratory or maintained in secure storage by the licensee or other entity. If the specimen in Bottle A is free of any evidence of drugs or drug metabolites, and is a valid specimen, then the licensee, other entity, or laboratory may discard the specimen in Bottle B.

(4) If initial and confirmatory test results from the specimen in Bottle A are positive for one or more drugs or drug metabolites, or if validity testing at the HHS-certified laboratory shows that the specimen has been subject to adulteration, substitution, or other means of subversion, the laboratory shall report the results to the MRO. Within 3 business days (Monday through Friday, excluding holidays) of being notified by the MRO that the donor's specimen yielded a non-negative test result, the donor may request that the split specimen in Bottle B be tested by another HHS-certified laboratory. The MRO shall inform the donor of this option, and the specimen in Bottle B may be tested only at the donor's request. The donor shall provide his or her written permission for the testing of Bottle B and neither the licensee, MRO, NRC, nor any other entity may order testing of Bottle B without the donor's written permission.

(5) If the donor requests that the specimen in Bottle B be tested, the HHS-certified laboratory shall forward Bottle B to a second HHS-certified laboratory that did not test the specimen in Bottle A as soon as reasonably practical and not more than one business day following the day of the donor's request.

(6) The HHS-certified laboratory that tests the specimen in Bottle B shall provide quantitative test results to the MRO and the MRO shall provide them to the donor.

(b) *Donor request to MRO for a retest of a single specimen.* (1) For a drug-positive, adulterated, or substituted result reported on a single specimen of 30 mL or more which the donor submitted to the licensee or other entity, a donor may request (through the MRO) that an aliquot from the single specimen be tested by a second HHS-certified laboratory to verify the result reported by the first laboratory. The MRO shall inform the donor of the option for a retest and the donor shall request the retest within 3 business days after notification by the MRO of the non-negative test result. The donor shall provide his or her written permission for the retest and neither the licensee, MRO, NRC, nor any other entity may order retesting of the specimen without the donor's written permission, except as provided in § 26.185(m).

(2) For a single specimen that the laboratory has reported as invalid, a donor may not request that an aliquot from the single specimen be tested by a second HHS-certified laboratory. If the donor requests testing of the specimen, the HHS-certified laboratory shall forward the specimen to a second HHS-certified laboratory that did not test the specimen as soon as reasonably practical and not more than one business day following the day of the donor's request.

(c) *Retesting a specimen for drugs.* (1) The second laboratory shall use its standard confirmatory drug test when retesting an aliquot of a single specimen or testing Bottle B of a split specimen for the drug(s) or drug metabolite(s) for which the first laboratory reported a positive result(s).

(2) Because some drugs or drug metabolites may deteriorate during storage, the retest by the second laboratory is not subject to a specific drug cutoff level, but must provide data sufficient to confirm the presence of the drug(s) or drug metabolite(s) down to the assay's LOD.

(3) If the second laboratory fails to reconfirm the presence of the drug(s) or drug metabolite(s) for which the first

laboratory reported a positive result(s), the second laboratory shall attempt to determine the reason for not reconfirming the first laboratory's findings by conducting specimen validity tests. The second laboratory shall conduct the same specimen validity tests it would conduct on a single specimen or the specimen in Bottle A of a split specimen.

(4) The second laboratory shall report all results to the licensee's or other entity's MRO.

(d) *Retesting a specimen for adulterants.* A second laboratory shall use the appropriate confirmatory validity test and criteria specified in § 26.161(c) to reconfirm an adulterant result when retesting an aliquot from a single specimen or when testing Bottle B of a split specimen. The second laboratory may only conduct the confirmatory validity test needed to reconfirm the adulterant result reported by the first laboratory.

(e) *Retesting a specimen for substitution.* A second laboratory shall use its confirmatory creatinine and confirmatory specific gravity tests, when retesting an aliquot of a single specimen or testing Bottle B of a split specimen, to reconfirm that the creatinine concentration was less than 2 mg/dL and the specific gravity was less than or equal to 1.0010 or equal to or greater than 1.0200. However, the second laboratory shall apply the cutoff levels for a substituted result in this part and shall report the results as non-confirmed if the second laboratory's results exceed the original test cutoff parameters. The second laboratory may only conduct the confirmatory creatinine and specific gravity tests to reconfirm the substitution result reported by the first laboratory.

(f) *Management actions and sanctions.* (1) If the MRO confirms a non-negative test result(s) from the first HHS-certified laboratory and the donor requests testing of Bottle B of a split specimen or retesting of an aliquot from a single specimen, the licensee or other entity shall administratively withdraw the individual's authorization on the basis of the first confirmed non-negative test result until the results of testing Bottle B or retesting an aliquot of the single specimen are available and have been reviewed by the MRO. If the MRO reports that the results of testing Bottle B or retesting the aliquot of a single specimen confirm any of the original non-negative test result(s), the licensee or other entity shall impose the appropriate sanctions specified in Subpart D of this part. If the results of testing Bottle B or retesting the aliquot of a single specimen are negative, the licensee or other entity—

(i) May not impose any sanctions on the individual;

(ii) Shall eliminate from the tested individual's personnel and other records any matter that could link the individual to the temporary administrative action;

(iii) May not disclose the temporary administrative action in response to a suitable inquiry conducted under the provisions of § 26.63 or to any other inquiry or investigation required in this chapter. To ensure that no records have been retained, access to the system of files and records must be provided to personnel conducting reviews, inquiries into allegations, or audits under the provisions of § 26.41, or to NRC inspectors; and

(iv) Shall provide the tested individual with a written statement that the records specified in §§ 26.213 and 26.215 have not been retained and shall inform the individual in writing that the temporary administrative action that was taken will not be disclosed and need not be disclosed by the individual in response to requests for self-disclosure of potentially disqualifying FFD information.

(2) If a donor requests that Bottle B be tested or that an aliquot of a single specimen be retested, and either Bottle B or the single specimen are not available due to circumstances outside of the donor's control (including, but not limited to, circumstances in which there is an insufficient quantity of the single specimen to permit retesting, either Bottle B or the original single specimen is lost in transit to the second HHS-certified laboratory, Bottle B has been lost), the MRO shall cancel the test. The licensee or other entity shall eliminate from the donor's personnel and other records any matter that could link the donor to the original non-negative test result(s) and any temporary administrative action, and may not impose any sanctions on the donor for a cancelled test. If the original specimen was collected for random, for-cause, or post-event testing, the licensee or other entity shall document only that the test was performed and cancelled. If the original specimen was collected for pre-access or followup testing, the MRO shall direct the licensee or other entity to collect another specimen for testing as soon as reasonably practical. If test results from the second specimen collected are non-negative and the MRO determines that the donor has violated the FFD policy, the licensee or other entity shall impose the appropriate sanctions specified in Subpart D of this part, but may not consider the original confirmed non-negative test result in determining the appropriate sanctions.

§ 26.167 Quality assurance and quality control.

(a) *Quality assurance program.* Each HHS-certified laboratory shall have a quality assurance program that encompasses all aspects of the testing process, including, but not limited to, specimen accessioning, chain of custody, security and reporting of results, initial and confirmatory testing, certification of calibrators and controls, and validation of analytical procedures. The performance characteristics (*e.g.*, accuracy, precision, LOD, limit of quantitation (LOQ), specificity) of each test must be validated and documented for each test. Validation of procedures must document that carryover does not affect the donor's specimen results. Periodic re-verification of analytical procedures is required. Quality assurance procedures must be designed, implemented, and reviewed to monitor the conduct of each step of the testing process.

(b) *Calibrators and controls required.* Each analytical run of specimens for which an initial or confirmatory validity test, or an initial or confirmatory drug test, is being performed must include the appropriate calibrators and controls.

(c) *Quality control requirements for performing initial and confirmatory validity tests.* (1) Requirements for performing creatinine tests.

(i) The creatinine concentration must be measured to 1 decimal place on both the initial and the confirmatory creatinine tests.

(ii) The initial creatinine test must have a calibrator at 2 mg/dL.

(iii) The initial creatinine test must have a control in the range of 1–1.5 mg/dL, a control in the range of 3–20 mg/dL, and a control in the range of 21–25 mg/dL.

(iv) The confirmatory creatinine test (performed on those specimens with a creatinine concentration less than 2 mg/dL on the initial test) must have a calibrator at 2 mg/dL, a control in the range of 1–1.5 mg/dL, and a control in the range of 3–4 mg/dL.

(2) Requirements for performing specific gravity tests.

(i) The refractometer must report and display the specific gravity to 4 decimal places, and must be interfaced with a laboratory information management system (LIMS), or computer, and/or generate a hard copy or digital electronic display to document the numerical result.

(ii) The initial and confirmatory specific gravity tests must have a calibrator or control at 1.0000.

(iii) The initial and confirmatory specific gravity tests must have the following controls:

(A) One control targeted at 1.0020;

(B) One control in the range of 1.0040–1.0180; and

(C) One control equal to or greater than 1.0200 but not greater than 1.0250.

(3) Requirements for performing pH tests.

(i) Colorimetric pH tests that have the dynamic range of 2–12 to support the 3 and 11 pH cutoffs and pH meters must be capable of measuring pH to 1 decimal place. Dipsticks, colorimetric pH tests, and pH paper that have a narrow dynamic range and do not support the 2–12 pH cutoffs may be used only to determine whether initial validity tests must be performed. At a minimum, pH screening tests must have the following controls:

(A) One control below the lower decision point in use;

(B) One control between the decision points in use; and

(C) One control above the upper decision point in use.

(ii) An initial colorimetric pH test must have the following calibrators and controls:

(A) One calibrator at 3;

(B) One calibrator at 11;

(C) One control in the range of 2–2.8;

(D) One control in the range 3.2–4;

(E) One control in the range of 4.5–9;

(F) One control in the range of 10–10.8;

(G) One control in the range of 11.2–12.

(iii) If a pH screening test is not used, an initial pH meter test must have the following calibrators and controls:

(A) One calibrator at 4;

(B) One calibrator at 7;

(C) One calibrator at 10;

(D) One control in the range of 2–2.8;

(E) One control in the range 3.2–4;

(F) One control in the range of 10–10.8; and

(G) One control in the range of 11.2–12.

(iv) If a pH screening test is used, an initial or confirmatory pH meter test must have the following calibrators and controls when the screening result indicates that the pH is below the lower decision point in use:

(A) One calibrator at 4;

(B) One calibrator at 7;

(C) One control in the range of 2–2.8; and

(D) One control in the range 3.2–4.

(v) If a pH screening test is used, an initial or confirmatory pH meter test must have the following calibrators and controls when the screening result indicates that the pH is above the upper decision point in use:

(A) One calibrator at 7;

(B) One calibrator at 10;

(C) One control in the range of 10–10.8; and

(D) One control in the range of 11.2–12.

(4) Requirements for performing oxidizing adulterant tests.

(i) Initial tests for oxidizing adulterants must include a calibrator at the appropriate cutoff concentration for the compound of interest, a control without the compound of interest (*i.e.*, a certified negative control), and at least one control with one of the compounds of interest at a measurable concentration.

(ii) A confirmatory test for a specific oxidizing adulterant must use a different analytical method than that used for the initial test. Each analytical run must include an appropriate calibrator, a control without the compound of interest (*i.e.*, a certified negative control), and a control with the compound of interest at a measurable concentration.

(5) Requirements for performing nitrite tests. The initial and confirmatory nitrite tests must have a calibrator at the cutoff concentration, a control without nitrite (*i.e.*, certified negative urine), one control in the range of 200–400 mcg/mL, and one control in the range of 500–625 mcg/mL.

(6) Requirements for performing ''other'' adulterant tests.

(i) The initial and confirmatory tests for any ''other'' adulterant that may be identified in the future must satisfy the requirements in § 26.161(a).

(ii) The confirmatory test for ''other'' adulterants must use a different analytical principle or chemical reaction than that used for the initial test.

(iii) The initial and confirmatory tests for ''other'' adulterants must include an appropriate calibrator, a control without the compound of interest (*i.e.*, a certified negative control), and a control with the compound of interest at a measurable concentration.

(d) *Quality control requirements for performing initial drug tests.* (1) Any initial drug test performed by an HHS-certified laboratory must use an immunoassay that meets the requirements of the Food and Drug Administration for commercial distribution. Non-instrumented immunoassay testing devices that are pending HHS/Substance Abuse and Mental Health Services Administration (SAMHSA) review and approval may not be used for initial drug testing under this part.

(2) HHS-certified laboratories may perform multiple initial drug tests for the same drug or drug class, provided that all tests meet the cutoffs and quality control requirements of this part.

(3) Each analytical run of specimens for initial testing must include—

(i) Sample(s) certified to contain no drug (*i.e.*, negative urine samples);

(ii) At least one control fortified with a drug or drug metabolite targeted at 25 percent above the cutoff;

(iii) At least one control fortified with a drug or drug metabolite targeted at 75 percent of the cutoff;

(iv) A sufficient number of calibrators to ensure and document the linearity of the assay method over time in the concentration area of the cutoff (after acceptable values are obtained for the known calibrators, those values will be used to calculate sample data);

(v) A minimum of 10 percent of the total specimens in each analytical run must be quality control samples; and

(vi) One percent of each run, with a minimum of at least one sample, must be the laboratory's blind quality control samples to appear as routine specimens to the laboratory analysts.

(e) *Quality control requirements for performing confirmatory drug tests.* (1) Confirmatory tests for drugs and drug metabolites must be performed using gas chromatography/mass spectrometry (GC/MS) or other confirmatory test methodologies that HHS-certified laboratories are permitted to use in Federal workplace drug testing programs for this purpose.

(2) At least 10 percent of the samples in each analytical run of specimens must be calibrators and controls. Each analytical run of specimens that are subjected to confirmatory testing must include—

(i) Sample(s) certified to contain no drug (*i.e.*, negative urine samples);

(ii) Positive calibrator(s) and control(s) fortified with a drug or drug metabolite;

(iii) At least one control fortified with a drug or drug metabolite targeted at 25 percent above the cutoff; and

(iv) At least one calibrator or control that is targeted at or below 40 percent of the cutoff.

(f) *Blind performance testing.* Each licensee and other entity shall submit blind performance test samples to the HHS-certified laboratory.

(1) During the initial 90-day period of any contract with an HHS-certified laboratory (not including rewritten or renewed contracts), each licensee or other entity shall submit blind performance test samples to each HHS-certified laboratory with whom it contracts in the amount of at least 20 percent of the total number of specimens submitted (up to a maximum of 100 blind performance specimens) or

30 blind performance test samples, whichever is greater.

(2) Following the initial 90-day period, the number of blind performance test samples submitted per quarter must be a minimum of 1 percent of all specimens (up to a maximum of 100) or 10 blind performance test samples, whichever is greater. Both during the initial 90-day period and quarterly thereafter, licensees and other entities should attempt to submit blind performance test samples at a frequency that corresponds to the submission frequency for other specimens.

(3) Approximately 15 percent of the blind performance test samples submitted to the laboratory must be positive for one or more drugs per sample so that all of the drugs for which the FFD program is testing are included each quarter. The positive samples must be spiked only with those drugs for which the FFD program is testing and spiked with concentrations between 60–80 percent of the initial cutoff values for the panel of drugs established herein, or of any lower cutoff values established by the licensee or other entity. To challenge the HHS-certified laboratory's ability to determine specimen validity, the licensee or other entity shall submit blind samples each quarter that are appropriately adulterated, diluted, or substituted, in the amount of 5 percent of the specimens submitted that quarter or at least 3 samples per quarter (one each that is adulterated, diluted, or substituted), whichever is greater.

(4) Approximately 80 percent of the blind performance test samples submitted to the laboratory each quarter must be blank (*i.e.*, certified to contain no drug).

(5) Licensees and other entities shall use only blind performance test samples that have been certified by the supplier to be negative (*i.e.*, as certified by immunoassay and confirmatory testing), drug positive [*i.e.*, certified by immunoassay and confirmatory testing to contain one or more drug(s) or drug metabolite(s)], adulterated (*i.e.*, certified to be adulterated with a specific adulterant using an appropriate confirmatory validity test), or substituted (*i.e.*, the creatinine concentration and specific gravity satisfy the criteria for a substituted specimen using confirmatory creatinine and specific gravity tests, respectively). The supplier shall also provide the expiration date for each blind performance test sample to ensure that each quality control sample will give the expected result when it is submitted and correctly tested by a laboratory before the expiration date. In addition—

(i) Drug performance testing samples must satisfy, but are not limited to, one of the following criteria:

(A) The drug or drug metabolite concentration in the sample must be at least 20 percent above the designated cutoff for either the initial drug test or the confirmatory drug test, depending upon which is to be evaluated;

(B) For retest samples, the drug or drug metabolite concentration may be as low as 40 percent of the cutoff;

(C) For routine samples, the drug or drug metabolite concentration may be below the cutoff for special purposes;

(D) A negative sample may not contain the target drug analyte at a concentration greater than 10 percent of the confirmatory cutoff; and

(E) Samples may be fortified with interfering substances.

(ii) Validity performance testing samples must satisfy, but are not limited to, one of the following criteria:

(A) The nitrite concentration must be at least 20 percent above the cutoff;

(B) The pH must be less than 2.75 or greater than 11.25;

(C) The concentration of an oxidant will be at a level sufficient to challenge a laboratory's ability to identify and confirm the oxidant;

(D) The creatinine concentration must be between 0 and 20 mg/dL; and

(E) The specific gravity must be less than or equal to 1.0050 or between 1.0170 and 1.0230.

(g) *Errors in testing.* The licensee or other entity shall ensure that the HHS-certified laboratory investigates any testing errors or unsatisfactory performance discovered in blind performance testing, in the testing of actual specimens, or through the processing of reviews, as well as any other errors or matters that could adversely reflect on the testing process.

(1) Whenever possible, the investigation must determine relevant facts and identify the root cause(s) of the testing or process error. The licensee or other entity, and the HHS-certified laboratory, shall take action to correct the causes of any errors or unsatisfactory performance that are within their control. Sufficient records shall be maintained to furnish evidence of activities affecting quality. The licensee or other entity shall assure that the cause of the condition is determined and the corrective action taken to preclude repetition. The identification of the significant condition, the cause of the condition, and the corrective action taken shall be documented and reported to appropriate levels of management.

(2) Should a false positive error occur on a blind performance test sample or on a regular specimen, the licensee or other entity shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future. If there is reason to believe that the error could have been systematic, the licensee or other entity may also require review and re-analysis of previously run specimens.

(3) Should a false positive error occur on a blind performance test sample and the error is determined to be technical or methodological, the licensee or other entity shall instruct the laboratory to provide all quality control data from the batch or analytical run of specimens that included a false positive sample. In addition, the licensee or other entity shall require the laboratory to retest all specimens that analyzed as positive for that drug or metabolite, or as non-negative in validity testing, from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting must be documented by a statement signed by the laboratory's certifying scientist. The licensee or other entity and the NRC also may require an onsite review of the laboratory, which may be conducted unannounced during any hours of operation of the laboratory.

(h) *Accuracy.* Volumetric pipettes and measuring devices must be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedures. Automatic pipettes and dilutors must be checked for accuracy and reproducibility both before being placed in service and periodically thereafter.

(i) *Calibrators and controls.* Laboratory calibrators and controls must be prepared using pure drug reference materials, stock standard solutions obtained from other laboratories, or standard solutions that are obtained from commercial manufacturers and are properly labeled as to content and concentration. Calibrators and controls may not be prepared from the same stock solution. The standards and controls must be labeled with the following dates: When received; when prepared or opened; when placed in service; and when scheduled for expiration.

§ 26.169 Reporting results.

(a) The HHS-certified laboratory shall report test results to the licensee's or other entity's MRO within 5 business days after receiving the specimen from the licensee or other entity. Before reporting any test result to the MRO, the laboratory's certifying scientist shall certify the result as correct. The report must identify the substances for which testing was performed; the results of the validity and drug tests; the cutoff levels

for each; any indications of tampering, adulteration, or substitution that may be present; the specimen identification number assigned by the licensee or other entity; and the specimen identification number assigned by the laboratory.

(b) The HHS-certified laboratory shall report as negative all specimens that are negative on the initial or confirmatory drug and validity tests. Specimens that test as non-negative on the confirmatory analysis must be reported to the MRO as positive for a specific drug(s) or drug metabolite(s), or as meeting the criteria for an adulterated, substituted, or dilute specimen.

(c) If licensees or other entities specify cutoff levels for drugs or drug metabolites that are more stringent than those specified in this part, the laboratory need only conduct the more stringent tests and shall report the results of the initial and confirmatory tests only for the more stringent cutoff levels.

(d) For a specimen that is found to be dilute, adulterated, or substituted, the laboratory shall report the specimen as dilute, adulterated, or substituted and, when applicable, shall provide the MRO with the numerical values that support the reported result. The MRO may not disclose the numerical values to the licensee or other entity, except as permitted in § 26.37(b). If the numerical values for creatinine are below the LOD, the laboratory shall report to the MRO ''creatinine none detected'' (*i.e.,* substituted) along with the numerical values. For a specimen that has an invalid result, the laboratory shall contact the MRO and both will decide whether testing by another certified laboratory would be useful in being able to report a positive or adulterated result. Such contact may occur through any secure electronic means (e.g., telephone, fax, e-mail). If no further testing is necessary, the laboratory shall report the invalid result to the MRO.

(e) The laboratory shall report all non-negative test results for a specimen to the MRO. For example, a specimen may be both adulterated and positive for one or more specific drugs.

(f) The laboratory shall provide numerical values for non-negative confirmatory test results when the MRO requests such information. The MRO's request may be either a general request covering all such results or a specific case-by-case request. When the concentration of a drug, metabolite, or adulterant exceeds the linear range of the standard curve, the laboratory may report to the MRO that the quantitative value ''exceeds the linear range of the test,'' that the quantitative value is ''equal to or greater than <insert the value for the upper limit of the linear range>,'' or may report an accurate quantitative value above the upper limit of the linear range that was obtained by diluting an aliquot of the specimen. The MRO may not disclose quantitative test results to the licensee or other entity, but shall report only whether the specimen was drug-positive (and for which analyte), adulterated, substituted, invalid, or negative, except as permitted under § 26.37(b). This paragraph does not preclude either the laboratory or the MRO from providing program performance data, as required under § 26.217.

(g) The laboratory shall routinely provide quantitative values for confirmatory opiate test results for morphine or codeine that are greater than or equal to 15,000 ng/mL, even if the MRO has not requested quantitative values for the test result.

(h) The laboratory may transmit results to the MRO by various electronic means (e.g., teleprinters, facsimile, or computer) in a manner designed to ensure the confidentiality of the information. The laboratory may not provide results verbally by telephone. The licensee or other entity, directly or through the HHS-certified laboratory, shall ensure the security of the data transmission and ensure only authorized access to any data transmission, storage, and retrieval system.

(i) For negative test results, the HHS-certified laboratory may fax, courier, mail, or electronically transmit a computer-generated electronic report and/or a legible image or copy of the completed custody-and-control form to the MRO. However, for non-negative results, the laboratory shall fax, courier, mail, or electronically transmit a legible image or copy of the completed custody-and-control form to the MRO.

(j) For a specimen that has a non-negative result, the laboratory shall retain the original custody-and-control form and transmit to the MRO a copy of the original custody-and-control form signed by a certifying scientist.

(k) The HHS-certified laboratory shall provide to the licensee's or other entity's official responsible for coordination of the FFD program an annual statistical summary of urinalysis testing, which may not include any personal identifying information. In order to avoid sending data from which it is likely that information about a donor's test result can be readily inferred, the laboratory may not send a summary report if the licensee or other entity has fewer than 10 specimen test results in a 1-year period. The summary report must include test results that were reported within the year period. The laboratory shall send the summary report to the licensee or other entity within 14 calendar days after the end of the 1-year period covered by the report. The statistics must be presented either for the cutoff levels specified in this part or for any more stringent cutoff levels that the licensee or other entity may specify. The HHS-certified laboratory shall make available quantitative results for all specimens tested when requested by the NRC, licensee, or other entity for whom the laboratory is performing drug-testing services. If the FFD program tests for additional drugs beyond those listed in § 26.31(d), the summary must include drug test results for the additional drugs. The summary report must contain the following information:

(1) Total number of specimens received;

(2) Number of specimens reported as—

(i) Negative, and

(ii) Negative and dilute;

(3) Number of specimens reported as positive on confirmatory tests by drug or drug metabolite for which testing is conducted, including, but not limited to—

(i) Marijuana metabolite;

(ii) Cocaine metabolite;

(iii) Opiates (total);

(A) Codeine,

(B) Morphine, and

(C) 6–AM;

(iv) Phencyclidine;

(v) Amphetamines (total);

(A) Amphetamine, and

(B) Methamphetamine;

(4) Total number of specimens reported as adulterated;

(5) Total number of specimens reported as substituted;

(6) Total number of specimens reported as drug positive and dilute; and

(7) Total number of specimens reported as invalid.

Subpart H—Determining Fitness-for-Duty Policy Violations and Determining Fitness

§ 26.181 Purpose.

This subpart contains requirements for determining whether a donor has violated the FFD policy and for making a determination of fitness.

§ 26.183 Medical review officer.

(a) *Qualifications.* The MRO shall be knowledgeable of this part and of the FFD policies of the licensees and other entities for whom the MRO provides services. The MRO shall be a physician

holding either a Doctor of Medicine or Doctor of Osteopathy degree who is licensed to practice medicine by any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. By [insert date 2 years after publication of the final rule in the **Federal Register**], the MRO shall have passed an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of Federally mandated drug tests.

(b) *Relationships.* The MRO may be an employee of the licensee or other entity or a contractor. However, the MRO may not be an employee or agent of, or have any financial interest in, an HHS-certified laboratory or a contracted operator of a licensee testing facility for whom the MRO reviews drug test results. Additionally, the MRO may not derive any financial benefit by having the licensee or other entity use a specific drug testing laboratory or licensee testing facility operating contractor and may not have any agreement with such parties that may be construed as a potential conflict of interest.

(c) *Responsibilities.* The primary role of the MRO is to review and interpret non-negative test results obtained through the licensee's or other entity's testing program and to identify any evidence of subversion of the testing process. The MRO is also responsible for identifying any issues associated with collecting and testing specimens, and for advising and assisting FFD program management in planning and overseeing the overall FFD program.

(1) In carrying out these responsibilities, the MRO shall examine alternate medical explanations for any non-negative test result. This action may include, but is not limited to, conducting a medical interview with the donor, reviewing the donor's medical history, or reviewing any other relevant biomedical factors. The MRO shall review all medical records that the donor may make available when a non-negative test result could have resulted from responsible use of legally prescribed medication, a documented condition or disease state, or the demonstrated physiology of the donor.

(2) The MRO may only consider the results of tests of specimens that are collected and processed in accordance with this part, including the results of testing split specimens, in making his or her determination, as long as those split specimens have been stored and tested in accordance with the procedures described in this part.

(d) *MRO staff.* Individuals who provide administrative support to the MRO may be employees of a licensee or other entity, employees of the MRO, or employees of an organization with whom a licensee or other entity contracts for MRO services.

(1) Direction of MRO staff activities. MROs shall be directly responsible for all administrative, technical, and professional activities of individuals who are serving MRO staff functions under his or her direction.

(i) The duties of MRO staff must be maintained independent from any other activity or interest of a licensee or other entity, in order to protect the integrity of the MRO function and donors' privacy.

(ii) An MRO's responsibilities for directing MRO staff must include, but are not limited to, ensuring that—

(A) The procedures being performed by MRO staff meet NRC regulations and HHS' and professional standards of practice;

(B) Records and other donor personal information are maintained confidential by MRO staff and are not released to other individuals or entities, except as permitted under this part;

(C) Data transmission is secure; and

(D) Drug test results are reported to the licensee's or other entity's designated reviewing official only in accordance with the requirements of this part.

(iii) The MRO may not delegate any of his or her responsibilities for directing MRO staff to any other individual or entity, except another MRO.

(2) MRO staff responsibilities. MRO staff may perform routine administrative support functions, including receiving test results, reviewing negative test results, and scheduling interviews for the MRO.

(i) The staff under the direction of the MRO may receive, review, and report negative test results to the licensee's or other entity's designated representative.

(ii) The staff reviews of non-negative drug test results must be limited to reviewing the custody-and-control form to determine whether it contains any errors that may require corrective action and to ensure that it is consistent with the information on the MRO's copy. The staff may resolve errors in custody-and-control forms that require corrective action(s), but shall forward the custody-and-control forms to the MRO for review and approval of the resolution.

(iii) The staff may not conduct interviews with donors to discuss non-negative drug test results nor request medical information from a donor. Only the MRO may request and review medical information related to a non-negative drug test result or other matter from a donor.

(iv) Staff may not report nor discuss any non-negative test results received from the HHS-certified laboratory with any individuals other than the MRO and other MRO staff.

§ 26.185 Determining a fitness-for-duty policy violation.

(a) *MRO review required.* A non-negative drug test result does not automatically identify an individual as having used drugs in violation of the NRC's regulations, or the licensee's or other entity's FFD policy, or as having attempted to subvert the testing process. An individual who has a detailed knowledge of possible alternate medical explanations is essential to the review of the results. The MRO shall review all non-negative test results from the HHS-certified laboratory to determine whether the donor has violated the FFD policy before reporting the results to the licensee's or other entity's designated representative.

(b) *Reporting of initial test results prohibited.* Neither the MRO nor MRO staff may report non-negative initial test results to the licensee or other entity that are received from the HHS-certified laboratory.

(c) *Discussion with the donor.* Before determining that a non-negative test result or other occurrence is an FFD policy violation and reporting it to the licensee or other entity, the MRO shall give the donor an opportunity to discuss the test result or other occurrence with the MRO, except as described in paragraph (d) of this section. After this discussion, if the MRO determines that a non-negative test result or other occurrence is an FFD policy violation, the MRO shall immediately notify the licensee's or other entity's designated representative.

(d) *Donor unavailability.* The MRO may determine that a non-negative test result or other occurrence is an FFD policy violation without having discussed the test result or other occurrence directly with the donor in the following three circumstances:

(1) The MRO has made and documented contact with the donor and the donor expressly declined the opportunity to discuss the test result or other occurrence that may constitute an FFD policy violation;

(2) A representative of the licensee or other entity, or an MRO staff member, has successfully made and documented contact with the donor and has instructed him or her to contact the MRO, and more than one business day has elapsed since the date on which the

licensee's representative or MRO's staff member successfully contacted the donor; or

(3) The MRO, after making all reasonable efforts and documenting the dates and time of those efforts, has been unable to contact the donor. Reasonable efforts include, at a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the donor at the day and evening telephone numbers listed on the custody-and-control form.

(e) *Additional opportunity for discussion.* If the MRO determines that the donor has violated the FFD policy without having discussed the non-negative test result or other occurrence directly with the donor, the donor may, upon subsequent notification of the MRO determination and within 30 days of that notification, present to the MRO information documenting the circumstances, including, but not limited to, serious illness or injury, which unavoidably prevented the donor from being contacted by the MRO or a representative of the licensee or other entity, or from contacting the MRO in a timely manner. On the basis of this information, the MRO may reopen the procedure for determining whether the donor's test result or other occurrence is an FFD policy violation and permit the individual to present information related to the issue. The MRO may modify the initial determination based on an evaluation of the information provided.

(f) *Review of invalid specimens.* (1) If the HHS-certified laboratory reports an invalid result, the MRO shall consult with the laboratory to determine whether additional testing by another HHS-certified laboratory may be useful in determining and reporting a drug-positive, adulterated, or substituted test result. If the MRO and the laboratory agree that further testing would be useful, the HHS-certified laboratory shall forward the specimen to a second laboratory for additional testing.

(2) If the MRO and the laboratory agree that further testing would not be useful and there is no technical explanation for the result, the MRO shall contact the donor and determine whether there is an acceptable medical explanation for the invalid result. If there is an acceptable medical explanation, the MRO shall report to the licensee or other entity that the test result is not an FFD policy violation, but that a negative test result was not obtained. If the medical reason for the invalid result is, in the opinion of the MRO, a temporary condition, the licensee or other entity shall collect a second urine specimen from the donor as soon as reasonably practical and rely upon the MRO's review of the test results from the second collection. The second specimen collected for the purposes of this paragraph may not be collected under direct observation. If the medical reason for the invalid result would similarly affect the testing of another urine specimen, the MRO may authorize an alternative method for drug testing. Licensees and other entities may not impose sanctions for an invalid test result due to a medical condition.

(3) If the MRO and the laboratory agree that further testing would not be useful and there is no legitimate technical or medical explanation for the invalid test result, the MRO shall require that a second collection take place as soon as practical under direct observation. The licensee or other entity shall rely upon the MRO's review of the test results from the directly observed collection.

(g) *Review of dilute specimens.* (1) If the HHS-certified laboratory reports that a specimen is dilute and that drugs or drug metabolites were detected in the specimen at or above the cutoff levels specified in this part or the licensee's or other entity's more stringent cutoff levels, and the MRO determines that there is no legitimate medical explanation for the presence of the drugs or drug metabolites in the specimen, the MRO shall determine that the drug test results are positive and that the donor has violated the FFD policy.

(2) If the MRO has reason to believe that the donor may have diluted a specimen in a subversion attempt, the MRO may require the laboratory to conduct confirmatory testing of the specimen at the LOD for any drugs or drug metabolites as long as each drug class is evaluated in accordance with § 26.31(c)(1)(ii). For purposes of this paragraph, the following circumstances are the exclusive grounds constituting a reason to believe that the donor may have diluted the specimen in a subversion attempt:

(i) The donor has presented, at this or a previous collection, a urine specimen that the HHS-certified laboratory reported as being substituted, adulterated, or invalid to the MRO and the MRO determined that there is no adequate technical or medical explanation for the result;

(ii) The donor has presented a urine specimen of 30 mL or more that falls outside the required temperature range, even if a subsequent directly observed collection was performed; and

(iii) The collector observed conduct clearly and unequivocally indicating an attempt to dilute the specimen.

(3) If the dilute specimen was collected under direct observation as required under § 26.69, the MRO may require the laboratory to conduct confirmatory testing at the LOD for any drugs or drug metabolites, as long as each drug class is evaluated in accordance with § 26.31(c)(1)(ii).

(4) If the drugs detected in a dilute specimen are any opium, opiate, or opium derivative (e.g., morphine/codeine), or if the drugs or metabolites detected indicate the use of prescription or over-the-counter medications, before determining that the donor has violated the FFD policy under paragraph (a) of this section, the MRO or his/her designee, who shall also be a licensed physician with knowledge of the clinical signs of drug abuse, shall conduct the clinical examination for abuse of these substances that is required in paragraph (j) of this section. An evaluation for clinical evidence of abuse is not required if the laboratory confirms the presence of 6–AM (i.e., the presence of this metabolite is proof of heroin use) in the dilute specimen.

(h) *Review of substituted specimens.* (1) If the HHS-certified laboratory reports a specimen as substituted (i.e., the creatinine concentration is less than 2 mg/dL and the specific gravity is less than or equal to 1.0010 or equal to or greater than 1.0200), the MRO shall contact the donor and offer the donor an opportunity to provide a legitimate medical explanation for the substituted result. The burden of proof resides solely with the donor, who must provide legitimate medical evidence within 5 business days that he or she produced the specimen for which the HHS-certified laboratory reported a substituted result. Any medical evidence must be submitted through a referral physician who is experienced and qualified in the medical issues involved. Claims of excessive hydration, or claims based upon unsubstantiated personal characteristics, including, but not limited to, race, gender, diet, and body weight, are not acceptable evidence without medical studies which demonstrate that the donor did produce the laboratory result.

(2) If the MRO determines that there is no legitimate medical explanation for the substituted test result, the MRO shall report to the licensee or other entity that the specimen was substituted.

(3) If the MRO determines that there is a legitimate medical explanation for the substituted test result and no drugs or drug metabolites were detected in the specimen, the MRO shall report to the licensee or other entity that no FFD policy violation has occurred.

(i) *Review of adulterated specimens.* (1) If the HHS-certified laboratory reports a specimen as adulterated with a specific substance, the MRO shall contact the donor and offer the donor an opportunity to provide a legitimate medical explanation for the adulterated result. The burden of proof resides solely with the donor, who must provide legitimate medical evidence within 5 business days that he or she produced the adulterated result through normal human physiology. Any medical evidence must be submitted through a referral physician experienced and qualified in the medical issues involved.

(2) If the MRO determines there is no legitimate medical explanation for the adulterated test result, the MRO shall report to the licensee or other entity that the specimen is adulterated.

(3) If the MRO determines that there is no legitimate medical explanation for the adulterated test result and no drugs or drug metabolites were detected in the specimen, the MRO shall report to the licensee or other entity that no FFD policy violation has occurred.

(j) *Review for opiates, prescription and over-the-counter medications.* (1) If the MRO determines that there is no legitimate medical explanation for a positive confirmatory test result for opiates and before the MRO determines that the test result is a violation of the FFD policy, the MRO or his/her designee, who shall also be a licensed physician with knowledge of the clinical signs of drug abuse, shall determine that there is clinical evidence, in addition to the positive test result, that the donor has illegally used opium, an opiate, or an opium derivative (*e.g.*, morphine/codeine). This requirement does not apply if the laboratory confirms the presence of 6–AM (*i.e.*, the presence of this metabolite is proof of heroin use), or the morphine or codeine concentration is equal to or greater than 15,000 ng/mL and the donor does not present a legitimate medical explanation for the presence of morphine or codeine at or above this concentration. The MRO may not determine that the consumption of food products is a legitimate medical explanation for the presence of morphine or codeine at or above this concentration.

(2) If the MRO determines that there is no legitimate medical explanation for a positive test result for drugs other than opiates that are commonly prescribed or included in over-the-counter preparations (*e.g.*, benzodiazepines in the first case, barbiturates in the second) and are listed in the licensee's or other entity's panel of substances to be tested, the MRO shall determine whether there is clinical evidence, in addition to the positive test result, of abuse of any of these substances or their derivatives.

(3) If the MRO determines that the donor has used another individual's prescription medication, including a medication containing opiates, and no clinical evidence of drug abuse is found, the MRO shall report to the licensee or other entity that the donor has misused a prescription medication. If the MRO determines that the donor has used another individual's prescription medication and clinical evidence of drug abuse is found, the MRO shall report to the licensee that the donor has violated the FFD policy.

(4) In determining whether a legitimate medical explanation exists for a positive test result for opiates, prescription or over-the-counter medications, the MRO may consider the use of a medication from a foreign country. The MRO shall exercise professional judgment consistently with the following principles:

(i) There can be a legitimate medical explanation only with respect to a drug that is obtained legally in a foreign country;

(ii) There can be a legitimate medical explanation only with respect to a drug that has a legitimate medical use. Use of a drug of abuse (*e.g.*, heroin, PCP) or any other substance that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the drug is obtained legally in a foreign country; and

(iii) Use of the drug can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.

(5) The MRO may not consider consumption of food products, supplements, or other preparations containing substances that may result in a positive drug test result, including, but not limited to supplements containing hemp products or coca leaf tea, as a legitimate medical explanation for the presence of drugs or drug metabolites in the urine specimen above the cutoff levels specified in § 26.163 or a licensee's or other entity's more stringent cutoff levels.

(6) The MRO may not consider the use of any drug contained in Schedule I of section 202 of the Controlled Substances Act [21 U.S.C. 812] as a legitimate medical explanation for a positive confirmatory drug test result, even if the drug may be legally prescribed and used under State law.

(k) *Results consistent with legitimate drug use.* If the MRO determines that there is a legitimate medical explanation for a positive drug test result, and that the use of a drug identified through testing was in the manner and at the dosage prescribed, and the results do not reflect a lack of reliability or trustworthiness, then the donor has not violated the licensee's or other entity's FFD policy. The MRO shall report to the licensee or other entity that no FFD policy violation has occurred. The MRO shall further evaluate the positive test result and medical explanation to determine whether use of the drug and/or the medical condition poses a potential risk to public health and safety as a result of the individual being impaired while on duty. If the MRO determines that such a risk exists, he or she shall ensure that a determination of fitness is performed.

(l) *Retesting authorized.* Should any question arise as to the accuracy or validity of a non-negative test result, only the MRO is authorized to order retesting of an aliquot of the original specimen. Retesting must be performed by a second HHS-certified laboratory. The MRO is also the only individual who may authorize a reanalysis of an aliquot of the original specimen or an analysis of any split specimen (Bottle B) in response to a written request from the donor tested.

(m) *Result scientifically insufficient.* Based on the review of inspection and audit reports, quality control data, multiple specimens, and other pertinent results, the MRO may determine that a non-negative test result is scientifically insufficient for further action and may declare that a drug or validity test result is not an FFD policy violation, but that a negative test result was not obtained. In this situation, the MRO may request retesting of the original specimen before making this decision. The MRO is neither expected nor required to request such retesting, unless in the sole opinion of the MRO, such retesting is warranted. The MRO may request that the reanalysis be performed by the same laboratory, or that an aliquot of the original specimen be sent for reanalysis to another HHS-certified laboratory. The licensee testing facility and the HHS-certified laboratory shall assist in this review process, as requested by the MRO, by making available the individual(s) responsible for day-to-day management of the licensee testing facility or the HHS-certified laboratory, or other individuals who are forensic toxicologists or who have equivalent forensic experience in urine drug testing, to provide specific consultation as required by the MRO.

(n) *Evaluating results from a second laboratory.* After a second laboratory tests an aliquot of a single specimen or the split (Bottle B) specimen, the MRO

shall take the following actions if the second laboratory reports the following results:

(1) If the second laboratory reconfirms any drug-positive test results, the MRO may report an FFD policy violation to the licensee or other entity;

(2) If the second laboratory reconfirms any non-negative validity test results, the MRO may report an FFD policy violation to the licensee or other entity;

(3) If the second laboratory does not reconfirm the drug-positive test results, the MRO shall report that no FFD policy violation has occurred; or

(4) If the second laboratory does not reconfirm the non-negative validity test results, the MRO shall report that no FFD policy violation has occurred.

(o) *Re-authorization after a first violation for a drug-positive test result.* The MRO is responsible for reviewing drug test results from an individual whose authorization was terminated or denied for a first violation of the FFD policy involving a confirmed positive drug test result and who is being considered for re-authorization. In order to determine whether subsequent positive confirmatory drug test results represent new drug use or remaining metabolites from the drug use that initially resulted in the FFD policy violation, the MRO shall request from the HHS-certified laboratory, and the laboratory shall provide, quantitation of the test results and other information necessary to make the determination. If the drug for which the individual first tested positive was marijuana and the confirmatory assay for delta-9-tetrahydrocannabinol-9-carboxylic acid yields a positive result, the MRO shall determine whether the confirmatory test result indicates further marijuana use since the first positive test result, or whether the test result is consistent with the level of delta-9-tetrahydrocannabinol-9-carboxylic acid that would be expected if no further marijuana use had occurred. If the test result indicates that no further marijuana use has occurred since the first positive test result, then the MRO shall declare the drug test result as negative.

(p) *Time to complete MRO review.* The MRO shall complete his or her review of non-negative test results and, in those instances in which the MRO determines that the donor has violated the licensee's or other entity's FFD policy, notify licensee or other entity's designated representative within 10 days of an initial non-negative test result. The MRO shall notify the licensee or other entity of the FFD policy violation in writing and in a manner designed to ensure the confidentiality of the information.

§ 26.187 Substance abuse expert.

(a) *Implementation.* By [insert date 2 years after publication of the final rule in the **Federal Register**], substance abuse experts (SAEs) upon whom licensees and other entities rely to make determinations of fitness under this part shall meet the requirements of this section.

(b) *Credentials.* An SAE shall have at least one of the following credentials:

(1) A licensed physician;

(2) A licensed or certified social worker;

(3) A licensed or certified psychologist;

(4) A licensed or certified employee assistance professional; or

(5) An alcohol and drug abuse counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

(c) *Basic knowledge.* An SAE shall be knowledgeable in the following areas:

(1) Demonstrated knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled-substance abuse disorders;

(2) Knowledge of the SAE function as it relates to the public's interests in the job duties performed by individuals who are subject to this part; and

(3) Knowledge of this part and any changes thereto.

(d) *Qualification training.* SAEs shall receive qualification training on the following subjects:

(1) Background, rationale, and scope of this part;

(2) Key drug testing requirements of this part, including specimen collection, laboratory testing, MRO review, and problems in drug testing;

(3) Key alcohol testing requirements of this part, including specimen collection, the testing process, and problems in alcohol tests;

(4) SAE qualifications and prohibitions;

(5) The role of the SAE in making determinations of fitness and the return-to-duty process, including the initial evaluation, referrals for education and/or treatment, the followup evaluation, continuing treatment recommendations, and the followup testing plan;

(6) Procedures for SAE consultation and communication with licensees or other entities, MROs, and treatment providers;

(7) Reporting and recordkeeping requirements of this part; and

(8) Issues that SAEs confront in carrying out their duties under this part.

(e) *Continuing education.* During each 3-year period following completion of initial qualification training, the SAE shall complete continuing education consisting of at least 12 continuing professional education hours relevant to performing SAE functions.

(1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAE practice pertaining to this part, since the time the SAE met the qualification training requirements of this section.

(2) Continuing education activities must include documented assessment tools to assist in determining that the SAE has learned the material.

(f) *Documentation.* The SAE shall maintain documentation showing that he or she currently meets all requirements of this section. The SAE shall provide this documentation upon request to NRC representatives, licensees, or other entities who are relying upon or contemplating relying upon the SAE's services.

(g) *Responsibilities and prohibitions.* The SAE shall evaluate individuals who have violated the substance abuse provisions of an FFD policy and make recommendations concerning education, treatment, return to duty, followup drug and alcohol testing, and aftercare. The SAE is not an advocate for the licensee or other entity, or the individual. The SAE's function is to protect public health and safety and the common defense and security by professionally evaluating the individual and recommending appropriate education/treatment, follow-up tests, and aftercare.

(1) The SAE is authorized to make determinations of fitness in at least the following three circumstances:

(i) When potentially disqualifying FFD information has been identified regarding an individual who has applied for authorization under this part;

(ii) When an individual has violated the substance abuse provisions of a licensee's or other entity's FFD policy; and

(iii) When an individual may be impaired by alcohol, prescription or over-the-counter medications, or illegal drugs.

(2) Upon determining the best recommendation for assisting the individual, the SAE shall serve as a referral source to assist the individual's entry into an education and/or treatment program.

(i) To prevent the appearance of a conflict of interest, the SAE may not refer an individual requiring assistance to his or her private practice or to a person or organization from whom the SAE receives payment or in which the SAE has a financial interest. The SAE is precluded from making referrals to entities with whom the SAE is financially associated.

(ii) There are four exceptions to the prohibitions contained in the preceding paragraph. The SAE may refer an individual to any of the following providers of assistance, regardless of his or her relationship with them:

(A) A public agency (*e.g.*, treatment facility) operated by a state, county, or municipality;

(B) A person or organization under contract to the licensee or other entity to provide alcohol or drug treatment and/or education services (*e.g.*, the licensee's or other entity's contracted treatment provider);

(C) The sole source of therapeutically appropriate treatment under the individual's health insurance program (*e.g.*, the single substance abuse in-patient treatment program made available by the individuals' insurance coverage plan); or

(D) The sole source of therapeutically appropriate treatment reasonably available to the individual (*e.g.*, the only treatment facility or education program reasonably located within the general commuting area).

§ 26.189 Determination of fitness.

(a) A determination of fitness is the process whereby it is determined whether there are indications that an individual may be in violation of the licensee's or other entity's FFD policy or is otherwise unable to safely and competently perform his or her duties. A determination of fitness must be made by a licensed or certified professional who is appropriately qualified and has the necessary clinical expertise, as verified by the licensee or other entity, to evaluate the specific fitness issues presented by the individual. A professional called upon by the licensee or other entity may not perform a determination of fitness regarding fitness issues that are outside of his or her specific areas of expertise. The types of professionals and the fitness issues for which they are qualified to make determinations of fitness include, but are not limited to, the following:

(1) An SAE who meets the requirements of § 26.187 may determine the fitness of an individual who may have engaged in substance abuse and shall determine an individual's fitness to be granted authorization following an unfavorable termination or denial of authorization under this part, but may not be qualified to assess the fitness of an individual who may have experienced mental illness, significant emotional stress, or other mental or physical conditions that may cause impairment but are unrelated to substance abuse, unless the SAE has additional qualifications for addressing those fitness issues;

(2) A clinical psychologist may determine the fitness of an individual who may have experienced mental illness, significant emotional stress, or cognitive or psychological impairment from causes unrelated to substance abuse, but may not be qualified to assess the fitness of an individual who may have a substance abuse disorder, unless the psychologist is also an SAE;

(3) A psychiatrist may determine the fitness of an individual who is taking psychoactive medications in accordance with one or more valid prescription(s), but may not be qualified to assess potential impairment attributable to substance abuse, unless the psychiatrist has had specific training to diagnose and treat substance abuse disorders;

(4) A physician may determine the fitness of an individual who may be ill, injured, fatigued, taking medications in accordance with one or more valid prescriptions, or using over-the-counter medications, but may not be qualified to assess the fitness of an individual who may have a substance abuse disorder, unless the physician is also an SAE; and

(5) As a physician with specialized training, the MRO may determine the fitness of an individual who may have engaged in substance abuse or may be ill, injured, fatigued, taking medications in accordance with one or more valid prescriptions, and/or using over-the-counter medications, but may not be qualified to assess an individual's fitness to be granted authorization following an unfavorable termination or denial of authorization under this part, unless the MRO is also an SAE.

(b) A determination of fitness must be made in at least the following circumstances:

(1) When there is an acceptable medical explanation for a non-negative test result, but there is a basis for believing that the individual could be impaired while on duty;

(2) Before making return-to-duty recommendations after an individual's authorization has been terminated unfavorably or denied in accordance with a licensee's or other entity's FFD policy;

(3) Before an individual is granted authorization when potentially disqualifying FFD information is identified and has not previously been evaluated by another licensee or entity who is subject to this part; and

(4) When potentially disqualifying FFD information is otherwise identified and the licensee's or other entity's reviewing official concludes that a determination of fitness is warranted under § 26.69.

(c) A determination of fitness that is conducted ''for cause'' must be conducted through face-to-face interaction between the subject individual and the professional making the determination. Electronic means of communication may not be used.

(1) If there is neither conclusive evidence of an FFD policy violation nor a significant basis for concern that the individual may be impaired while on duty, then the individual must be determined to be fit for duty.

(2) If there is no conclusive evidence of an FFD policy violation but there is a significant basis for concern that the individual may be impaired while on duty, then the subject individual must be determined to be unfit for duty. This result does not constitute a violation of this part nor of the licensee's or other entity's FFD policy, and no sanctions may be imposed. However, the professional who made the determination of fitness shall consult with the licensee's or other entity's management personnel to identify the actions required to ensure that any possible limiting condition does not represent a threat to workplace or public health and safety. Licensee or other entity management personnel shall implement the required actions. When appropriate, the subject individual may also be referred to the EAP.

(d) Neither the individual nor licensees and other entities may seek a second determination of fitness if a determination of fitness under this part has already been performed by a qualified professional employed by or under contract to the licensee or other entity. After the initial determination of fitness has been made, the professional may modify his or her evaluation and recommendations based on new or additional information from other sources including, but not limited to, the subject individual, another licensee or entity, or staff of an education or treatment program. Unless the professional who made the initial determination of fitness is no longer employed by or under contract to the licensee or other entity, only that professional is authorized to modify the evaluation and recommendations. When reasonably practicable, licensees and other entities shall assist in arranging for consultation between the new

professional and the professional who is no longer employed by or under contract to the licensee or other entity, to ensure continuity and consistency in the recommendations and their implementation.

Subpart I—Managing Fatigue

§ 26.195 Applicability.

The requirements in this subpart apply only to the licensees and other entities identified in § 26.3(a) and (d).

§ 26.197 General provisions.

(a) *Policy.* Licensees shall establish a policy for the management of fatigue and incorporate it into the written policy required in § 26.27(b).

(b) *Procedures.* In addition to the procedures required in § 26.27(c), licensees shall develop, implement, and maintain procedures that—

(1) Describe the process to be followed when any individual who is subject to an FFD program under § 26.25(a)(1) or (2) makes a self-declaration that he or she is not fit to safely and competently perform his or her duties for any part of a working tour as a result of fatigue. The procedure must—

(i) Describe the individual's and licensee's responsibilities related to self-declaration;

(ii) Describe requirements for establishing controls and conditions under which an individual may be permitted or required to perform work after that individual declares that he or she is not fit due to fatigue; and

(iii) Describe the process to be followed if the individual disagrees with the results of a fatigue assessment that is required under § 26.201(a)(2);

(2) Describe the process for implementing the work hour controls required under § 26.199 for the individuals who are performing the duties listed in § 26.199(a);

(3) Describe the process to be followed in conducting fatigue assessments under § 26.201; and

(4) Describe the sanctions, if any, that the licensee may impose on an individual following a fatigue assessment.

(c) *Training and examinations.* Licensees shall add the following KAs to the content of the training that is required in § 26.29(a) and the comprehensive examination required in § 26.29(b):

(1) Knowledge of the contributors to worker fatigue, circadian variations in alertness and performance, indications and risk factors for common sleep disorders, shiftwork strategies for obtaining adequate rest, and the effective use of fatigue countermeasures; and

(2) Ability to identify symptoms of worker fatigue and contributors to decreased alertness in the workplace.

(d) *Recordkeeping.* Licensees shall retain the following records for at least 3 years or until the completion of all related legal proceedings, whichever is later:

(1) Records of work hours for individuals who are subject to the work hour controls in § 26.199;

(2) The documentation of waivers that is required in § 26.199(d)(3)(iv), including the bases for granting the waivers;

(3) The documentation of work hour reviews that is required in § 26.199(j)(3);

(4) The documentation of fatigue assessments that is required in § 26.201(g); and

(5) Documentation of the collective work hours of each job duty group, as calculated in accordance with § 26.199(b)(2).

(e) *Reporting.* Licensees shall include the following information in the annual FFD program performance report required under § 26.217:

(1) A summary of the number of instances during the previous calendar year in which the licensee waived any of the work hour controls specified in § 26.199(d)(1) and (d)(2) for individuals within each job duty group in § 26.199(a). The report must include—

(i) Only those waivers under which work was performed; and

(ii) Each work hour control that was waived in § 26.199(d)(1) and (d)(2), including all of the work hour controls that were waived for any single extended work period for which it was necessary to waive more than one work hour control;

(2) The collective work hours of any job duty group listed in § 26.199(a) that exceeded an average of 48 hours per person per week in any averaging period during the previous calendar year, in accordance with § 26.199(f)(3) and (f)(5). The report must also include—

(i) The dates that defined the averaging period(s) during which collective work hours exceeded 48 hours per person per week;

(ii) The job duty group that exceeded the collective work hours limit; and

(iii) The conditions that caused the job duty group's collective work hours to exceed the collective work hours limit; and

(3) The number of fatigue assessments conducted during the previous calendar year, the conditions under which each fatigue assessment was conducted (*i.e.*, self-declaration, for cause, post-event, followup), and the management actions, if any, resulting from each fatigue assessment.

§ 26.199 Work hour controls.

(a) *Individuals subject to work hour controls.* Any individual who performs duties within the following job duty groups is subject to the requirements of this section:

(1) Operating or on-site directing of the operation of systems and components that a risk-informed evaluation process has shown to be significant to public health and safety;

(2) Performing maintenance or on-site directing of the maintenance of structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety;

(3) Performing Health Physics or Chemistry duties required as a member of the on-site emergency response organization minimum shift complement;

(4) Performing the duties of a Fire Brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; and

(5) Performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson, hereinafter referred to as security personnel.

(b) *Calculating work hours.* (1) Individual work hours. For the purposes of this subpart, licensees shall calculate an individual's work hours as the amount of time that an individual performs any duties for a licensee who is subject to this subpart, including all within-shift break times and rest periods during which there are no reasonable opportunities or accommodations appropriate for restorative sleep, but excluding shift turnover.

(i) Shift turnover includes only those activities that are necessary to safely transfer information and responsibilities between two or more individuals between shifts. Shift turnover activities may include, but are not limited to, discussions of the status of plant equipment, and the status of ongoing activities, such as extended tests of safety systems and components. Licensees may not exclude work hours worked during turnovers between individuals within a shift period due to rotations or relief within a shift. Activities that licensees may not exclude from work hours calculations also include, but are not limited to, shift holdovers to cover for late arrivals of incoming shift members; early arrivals of individuals for meetings, training, or pre-shift briefings for special evolutions;

and holdovers for interviews needed for event investigations.

(ii) Other than shift turnover, only that portion of a break or rest period during which there is a reasonable opportunity and accommodations for restorative sleep may be excluded from the licensee's calculation of an individual's work hours.

(iii) Licensees need not calculate the work hours of an individual who is qualified to perform the job duties listed in paragraph (a) of this section but has not performed such duties during the applicable calculation period. However, if the individual begins or resumes performing any of the job duties listed in paragraph (a) of this section, the licensee shall include in the calculation of the individual's work hours all work hours worked, including hours worked performing duties that are not listed in paragraph (a) of this section, and control the individual's work hours in accordance with the requirements of paragraph (d) of this section.

(2) Collective work hours. For the purposes of this subpart, licensees shall calculate collective work hours as the average number of work hours worked among each group of individuals who perform the duties listed in paragraph (a) of this section, within an averaging period that may not exceed 13 weeks, as follows:

(i) Licensees may define broad job duty groups comprised of individuals who perform the job duties listed in paragraph (a) of this section, or may define smaller groups of individuals who perform similar duties. The groups must collectively include all individuals who perform the job duties listed in paragraph (a) of this section;

(ii) Licensees shall include in the average for each job duty group the work hours of any individual who performs the job duties of the group at the licensee's site, except if, during the averaging period the individual worked less than 75 percent of the group's normally scheduled hours;

(iii) The days included in an averaging period must be consecutive or separated only by days that licensees are permitted to exclude from the collective work hour calculation under § 26.199(f)(1) through (f)(3) and (f)(5), (h), and (i);

(iv) Licensees shall include within an averaging period all days that are not excluded from collective work hour controls under § 26.199(f)(1) through (f)(3) and (f)(5), (h), and (i); and

(v) Licensees may not include in the collective work hour calculation for an averaging period any work hours that are included in a collective work hour calculation for any other averaging period.

(c) *Work hours scheduling.* Licensees shall schedule the work hours of individuals who are subject to this section consistent with the objective of preventing impairment from fatigue due to the duration, frequency, or sequencing of successive shifts.

(d) *Work hour controls for individuals.* Licensees shall control the work hours of individuals, as follows:

(1) Except as permitted under paragraph (d)(3) of this section, licensees shall ensure that any individual's work hours do not exceed the following limits:

(i) 16 work hours in any 24-hour period;

(ii) 26 work hours in any 48-hour period; and

(iii) 72 work hours in any 7-day period.

(2) Licensees shall ensure that individuals have adequate rest breaks. For the purposes of this subpart, a break is defined as an interval of time that falls between successive work periods, during which the individual does not perform any duties for the licensee other than shift turnover. At a minimum, licensees shall ensure that individuals who are subject to this section have the following breaks:

(i) A 10-hour break between successive work periods or an 8-hour break between successive work periods when a break of less than 10 hours is necessary to accommodate a crew's scheduled transition between work schedules or shifts;

(ii) A 24-hour break in any 7-day period; and

(iii) A 48-hour break in any 14-day period, except during the first 14 days of any plant outage if the individual is performing the job duties listed in paragraph (a)(1) through (a)(4) of this section.

(3) Licensees may grant a waiver of the individual work hour controls in paragraphs (d)(1) and (d)(2) of this section, as follows:

(i) In order to grant a waiver, the licensee shall meet both of the following requirements:

(A) An operations shift manager determines that the waiver is necessary to mitigate or prevent a condition adverse to safety, or a security shift manager determines that the waiver is necessary to maintain the security of the facility, or a site senior-level manager with requisite signature authority makes either determination; and

(B) A supervisor, who is qualified to direct the work to be performed by the individual and trained in accordance with the requirements of §§ 26.29 and 26.197(c), assesses the individual face to face and determines that there is reasonable assurance that the individual will be able to safely and competently perform his or her duties during the additional work period for which the waiver will be granted. At a minimum, the assessment must address the potential for acute and cumulative fatigue considering the individual's work history for at least the past 14 days, the potential for circadian degradations in alertness and performance considering the time of day for which the waiver will be granted, the potential for fatigue-related degradations in alertness and performance to affect risk-significant functions, and whether any controls and conditions must be established under which the individual will be permitted to perform work;

(ii) To the extent practicable, licensees shall rely upon the granting of waivers only to address circumstances that could not have been reasonably controlled;

(iii) Licensees shall ensure that the timing of the face-to-face supervisory assessment that is required in paragraph (d)(3)(i)(B) of this section supports a valid assessment of the potential for worker fatigue during the time the individual will be performing work under the waiver. Licensees may not perform the face-to-face assessment more than four hours before the individual begins performing any work under the waiver; and

(iv) Licensees shall document the bases for individual waivers. The documented basis for a waiver must include a description of the circumstances that necessitate the waiver, a statement of the scope of work and time period for which the waiver is approved, and the bases for the determinations required in paragraph (d)(3)(i) of this section.

(e) *Self-declarations during extended work hours.* If an individual is performing, or being assessed for, work under a waiver of the requirements contained in paragraphs (d)(1) and (d)(2) of this section and declares that, due to fatigue, he or she is unable to safely and competently perform his or her duties, the licensee shall immediately stop the individual from performing any duties listed in paragraph (a) of this section, except if the individual is required to continue performing those duties under other requirements of this chapter. If the subject individual must continue performing the duties listed in paragraph (a) of this section until relieved, the licensee shall immediately take action to relieve the individual. Following the self-declaration or relief

from performing the duties listed in paragraph (a) of this section, as applicable, the licensee—

(1) May reassign the individual to duties other than those listed in paragraph (a) of this section, but only if the results of a fatigue assessment, conducted in accordance with the requirements of § 26.201, indicate that the individual is fit to safely and competently perform those other duties; and

(2) Shall permit or require the individual to take a rest break of at least 10 hours before the individual returns to performing any duties listed in paragraph (a) of this section.

(f) *Collective work hour limits.* In addition to controlling individuals' work hours in accordance with paragraph (d) of this section, licensees shall control the collective work hours of each group of individuals who are performing similar job duties, as listed in paragraph (a) of this section. Licensees shall ensure that the collective work hours of each job duty group do not exceed an average of 48 hours per person per week in any averaging period, except as follows:

(1) The licensee need not impose the collective work hour controls required in this paragraph on the job duty groups specified in paragraphs (a)(1) through (a)(4) of this section during the first 8 weeks of a plant outage;

(2) For job duty groups comprised of security personnel—

(i) The group work hour average(s) may not exceed 60 hours per person per week during the first 8 weeks of a plant outage or a planned security system outage;

(ii) The group work hour average(s) may not exceed 60 hours per person per week during the actual conduct of force-on-force tactical exercises (*i.e.*, licensee exercises and NRC-observed exercises);

(iii) The licensee need not impose any collective work hour controls for the first 8 weeks of an unplanned security system outage or an increased threat condition;

(iv) If an increase in threat condition occurs while the site is in any plant outage or a planned security system outage and the increased threat condition persists for a period of 8 weeks or less, the licensee need not impose collective work hour controls on security personnel for the duration of the increased threat condition. However, if during any such outage, the threat condition returns to the least significant threat condition that was in effect at any time within the past 8 weeks, then the licensee shall limit the collective work hours of security personnel to an average of 60 hours per person per week for the first 8 weeks of the outage for the periods prior to and following the increased threat condition, and shall limit the collective work hours of security personnel to an average of 48 hours per person per week following the first 8 weeks of the outage;

(v) If additional increases in threat condition occur during an unplanned security system outage or increased threat condition, the relaxation of the collective work hour limits that is permitted in paragraph (f)(2)(iii) of this section may be extended with each increase in the threat condition, but only for a period that is the shorter of either the duration of the increased threat condition or 8 weeks;

(vi) If the threat condition decreases during an unplanned security system outage or increased threat condition, the applicability of the relaxation of the collective work hour limits that is permitted in paragraph (f)(2)(iii) of this section must based upon the date upon which the current threat condition was last entered as a result of an increase;

(3) The collective work hours of any job duty group listed in paragraph (a) of this section may exceed an average of 48 hours per person per week in one averaging period if all of the following conditions are met:

(i) The circumstances that cause the group's collective work hours to exceed 48 hours per person per week cannot be reasonably controlled;

(ii) The group's collective work hours do not exceed 54 hours per person per week; and

(iii) The additional work hours that result in the group's collective work hours exceeding 48 hours per person per week are worked only to address the circumstances that the licensee could not have reasonably controlled.

(4) The collective work hours of any job duty group may not exceed 48 hours per person per week if the collective work hours for the job duty group exceeded 48 hours per person per week—

(i) In the previous averaging period; or

(ii) In any other averaging period that ended within the past 26 weeks.

(5) Licensees may also exceed any collective work hour limits in this paragraph if the licensee has received prior approval from the NRC of a written request that includes, at a minimum,—

(i) A description of the specific circumstances that require the licensee to exceed the applicable collective work hour limit, the job duty group(s) affected, and the collective work hours limit(s) to be exceeded;

(ii) A statement of the period of time during which it will be necessary to exceed the collective work hour limit(s); and

(iii) A description of the fatigue mitigation strategies, including, but not limited to, rest break requirements and work hour limits, that the licensee will implement to ensure that the individuals affected will be fit to safely and competently perform their duties.

(g) *Successive plant outages.* If two or more plant outages occur at the licensee's site and the interval(s) between successive outages is less than 2 weeks, the licensee shall apply the requirements in paragraphs (d)(2)(iii), (f)(1), (f)(2)(i), and (f)(2)(iv) of this section based upon the number of days that have elapsed since the first plant outage in the series began.

(h) *Common defense and security.* Licensees need not meet the requirements of this section when informed in writing by the NRC that these requirements, or any subset thereof, are waived for security personnel in order to assure the common defense and security, for the duration of the period defined by the NRC.

(i) *Plant emergencies.* Licensees need not meet the requirements of paragraphs (c) through (f) of this section during declared emergencies, as defined in the licensee's emergency plan.

(j) *Reviews.* Licensees shall review the control of work hours for individuals who are subject to this subpart for each averaging period. Licensees shall complete this review within 30 days of the end of the averaging period. If any outages or increased threat conditions occurred since the licensee completed the most recent review, the licensee shall include in the review an assessment of the control of work hours during the outages or increased threat conditions. Licensees shall—

(1) Review the work hours and performance of individuals to assess the effectiveness of the licensee's work hour controls in achieving the objective of reasonable assurance that fatigue due to work hours does not compromise individuals' abilities to safely and competently perform their duties. At a minimum, the licensee's review must address—

(i) Individuals who were granted more than one waiver during the review period;

(ii) Individuals who were assessed for fatigue in accordance with § 26.201 during the review period;

(iii) Individuals who performed the job duties listed in paragraph (a) of this section whose average work hours per week exceeded 54 hours during any averaging period for which the

collective work hour limit is 48 hours in this section; and

(iv) Any security personnel whose average work hours per week exceeded 66 hours in any averaging periods for which the collective work hours limit in this section is 60 hours per person per week;

(2) Review individuals' hours worked and the waivers under which work was performed to assess staffing adequacy for all jobs subject to the work hour controls of this section;

(3) Document the methods used to conduct these reviews and the results of the reviews; and

(4) Record, trend, and correct, under the licensee's corrective action program, any problems identified in maintaining control of work hours consistent with the specific requirements and performance objectives of this part.

§ 26.201 Fatigue assessments.

(a) Licensees shall ensure that fatigue assessments are conducted under the following conditions:

(1) For-cause. In addition to any other test or determination of fitness that may be required under §§ 26.31(c) and 26.77, a fatigue assessment must be conducted in response to an observed condition of impaired individual alertness creating a reasonable suspicion that an individual is not fit to safely and competently perform his or her duties, except if the condition is observed during an individual's break period. If the observed condition is impaired alertness with no other behaviors or physical conditions creating a reasonable suspicion of possible substance abuse, then the licensee need only conduct a fatigue assessment. If the licensee has reason to believe that the observed condition is not due to fatigue, the licensee need not conduct a fatigue assessment;

(2) Self-declaration. A fatigue assessment must be conducted in response to an individual's self-declaration to his or her supervisor that he or she is not fit to safely and competently perform his or her duties for any part of a working tour because of fatigue, except if, following the self-declaration, the licensee permits or requires the individual to take a rest break of at least 10 hours before the individual returns to duty;

(3) Post-event. A fatigue assessment must be conducted in response to events requiring post-event drug and alcohol testing as specified in § 26.31(c). Licensees may not delay necessary medical treatment in order to conduct a fatigue assessment; and

(4) Followup. If a fatigue assessment was conducted for cause or in response to a self-declaration, and the licensee returns the individual to duty following a rest break of less than 10 hours in duration, the licensee shall reassess the individual for fatigue as well as the need to implement controls and conditions before permitting the individual to resume performing any job duties.

(b) Either a supervisor or a staff member of the FFD program, who is trained in accordance with the requirements of § 26.29 and § 26.197(c), shall conduct the fatigue assessment face to face with the individual whose alertness may be impaired.

(1) In the case of a fatigue assessment conducted for cause, the individual who observed the condition of impaired alertness may not conduct the fatigue assessment.

(2) In the case of a post-event fatigue assessment, the individual who conducts the fatigue assessment may not have—

(i) Performed or directed the work activities during which the event occurred;

(ii) Performed, within 24 hours before the event occurred, a fatigue assessment of the individuals who were performing or directing the work activities during which the event occurred; and

(iii) Evaluated or approved a waiver of the limits specified in § 26.199(d)(1) and (2) for any of the individuals who were performing or directing the work activities during which the event occurred, if the event occurred while such individuals were performing work under that waiver.

(c) A fatigue assessment must provide the information necessary for management decisions and actions in response to the circumstance that initiated the assessment.

(1) At a minimum, the fatigue assessment must address the following factors:

(i) Acute fatigue;

(ii) Cumulative fatigue; and

(iii) Circadian variations in alertness and performance.

(2) Individuals shall provide complete and accurate information that may be required by the licensee to address the factors listed in paragraph (c)(1) of this section. Licensees shall limit any inquiries to obtaining from the subject individual only the personal information that may be necessary to assess the factors listed in paragraph (c)(1) of this section.

(d) The licensee may not conclude that fatigue had not or will not degrade the individual's ability to safely and competently perform his or her duties solely on the basis that the individual's work hours have not exceeded any of the limits specified in § 26.199(d)(1) or that the individual has had the minimum rest breaks required in § 26.199(d)(2), as applicable.

(e) Following a fatigue assessment, the licensee shall determine and implement the controls and conditions, if any, that are necessary to permit the individual to resume performing duties for the licensee, including the need for a rest break.

(f) Licensees shall document the results of any fatigue assessments conducted, the circumstances that necessitated the fatigue assessment, and any controls and conditions that were implemented.

Subpart J—Recordkeeping and Reporting Requirements

§ 26.211 General provisions.

(a) Each licensee and other entity who is subject to this part shall maintain records and submit certain reports to the NRC. Records that are required by the regulations in this part must be retained for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the Commission terminates the facility's license, certificate, or other regulatory approval.

(b) All records may be stored and archived electronically, provided that the method used to create the electronic records meets the following criteria:

(1) Provides an accurate representation of the original records;

(2) Prevents the alteration of any archived information and/or data once it has been committed to storage; and

(3) Permits easy retrieval and re-creation of the original records.

§ 26.213 Recordkeeping requirements for licensees and other entities.

(a) Each licensee and other entity who is subject to this part shall retain the following records for at least 5 years after the licensee or other entity terminates or denies an individual's authorization or until the completion of all related legal proceedings, whichever is later:

(1) Records of self-disclosures, employment histories, and suitable inquiries that are required under §§ 26.55, 26.57, 26.59, and 26.69 that result in the granting of authorization;

(2) Records pertaining to the determination of a violation of the FFD policy and related management actions;

(3) Documentation of the granting and termination of authorization; and

(4) Records of any determinations of fitness conducted under § 26.189.

(b) Each licensee and other entity who is subject to this part shall retain the

following records for at least 3 years or until the completion of all related legal proceedings, whichever is later:

(1) Records of FFD training and examinations conducted under § 26.29; and

(2) Records of audits, audit findings, and corrective actions taken under § 26.41.

(c) Licensees and other entities shall ensure the retention and availability of records pertaining to any 5-year denial of authorization under § 26.75(c), (d), or (e)(2) and any permanent denial of authorization under § 26.75(b) and (g) for at least 40 years or until, upon application, the NRC determines that the records are no longer needed.

(d) Licensees and other entities shall retain any superseded versions of the written FFD policy and procedures required under §§ 26.27, 26.39, and 26.197(b) for at least 5 years or until completion of all legal proceedings related to an FFD violation that may have occurred under the policy and procedures, whichever is later.

(e) Licensees and other entities shall retain written agreements for the provision of services under this part for the life of the agreement or until completion of all legal proceedings related to an FFD policy violation that involved those services, whichever is later.

(f) Licensees and other entities shall retain records of the background investigations, credit and criminal history checks, and psychological assessments of FFD program personnel, conducted under § 26.31(b)(1)(ii), for the length of the individual's employment by or contractual relationship with the licensee or other entity, or until the completion of all related legal proceedings, whichever is later.

(g) If a licensee's or other entity's FFD program includes tests for drugs in addition to those specified in this part, as permitted under § 26.31(d)(1), or uses more stringent cutoff levels than those specified in this part, as permitted under § 26.31(d)(3), the licensee or other entity shall retain documentation certifying the scientific and technical suitability of the assays and cutoff levels used, as required under § 26.31(d)(1)(i) and (d)(3)(iii)(C), respectively, for the period of time during which the FFD program follows these practices or until the completion of all related legal proceedings, whichever is later.

§ 26.215 Recordkeeping requirements for collection sites, licensee testing facilities, and laboratories certified by the Department of Health and Human Services.

(a) Collection sites providing services to licensees and other entities, licensee testing facilities, and HHS-certified laboratories shall maintain and make available documentation of all aspects of the testing process for at least 2 years or until the completion of all legal proceedings related to a determination of an FFD violation, whichever is later. This 2-year period may be extended upon written notification by the NRC or by any licensee or other entity for whom services are being provided.

(b) Documentation that must be retained includes, but is not limited to, the following:

(1) Personnel files, including training records, for all individuals who have been authorized to have access to specimens, but are no longer under contract to or employed by the collection site, licensee testing facility, or HHS-certified laboratory;

(2) Chain-of-custody documents (other than forms recording specimens with negative test results and no FFD violations or anomalies, which may be destroyed after appropriate summary information has been recorded for program administration purposes);

(3) Quality assurance and quality control records;

(4) Superseded procedures;

(5) All test data (including calibration curves and any calculations used in determining test results);

(6) Test reports;

(7) Records pertaining to performance testing;

(8) Records pertaining to the investigation of testing errors or unsatisfactory performance discovered in blind performance testing, in the testing of actual specimens, or through the processing of appeals and MRO reviews, as well as any other errors or matters that could adversely reflect on the integrity of the testing process, investigation findings, and corrective actions taken, where applicable;

(9) Performance records on certification inspections;

(10) Records of preventative maintenance on licensee testing facility instruments;

(11) Records that summarize any test results that the MRO determined to be scientifically insufficient for further action;

(12) Either printed or electronic copies of computer-generated data;

(13) Records that document the dates, times of entry and exit, escorts, and purposes of entry of authorized visitors, maintenance personnel, and service personnel who have accessed secured areas of licensee testing facilities and HHS-certified laboratories; and

(14) Records of the inspection, maintenance, and calibration of EBTs.

§ 26.217 Fitness-for-duty program performance data.

(a) Licensees and other entities shall collect and compile FFD program performance data for each FFD program that is subject to this part.

(b) The FFD program performance data must include the following information:

(1) The random testing rate;

(2) Drugs for which testing is conducted and cutoff levels, including results of tests using lower cutoff levels and tests for drugs not included in the HHS panel;

(3) Populations tested (*i.e.*, individuals in applicant status, permanent licensee employees, C/Vs);

(4) Number of tests administered and results of those tests sorted by population tested (*i.e.*, individuals in applicant status, permanent licensee employees, C/Vs);

(5) Conditions under which the tests were performed, as defined in § 26.31(c);

(6) Substances identified;

(7) Number of subversion attempts by type; and

(8) Summary of management actions.

(c) Licensees and other entities who have a licensee-approved FFD program shall analyze the data at least annually and take appropriate actions to correct any identified program weaknesses. Records of the data, analyses, and corrective actions taken must be retained for at least 3 years or until the completion of any related legal proceedings, whichever is later.

(d) Any licensee or other entity who terminates an individual's authorization or takes administrative action on the basis of the results of a positive initial drug test for marijuana or cocaine shall also report these test results in the annual summary by processing stage (*i.e.*, initial testing at the licensee testing facility, testing at the HHS-certified laboratory, and MRO determinations). The report must also include the number of terminations and administrative actions taken against individuals for the reporting period.

(e) Licensees and other entities shall submit the FFD program performance data (for January through December) to the NRC annually, before March 1 of the following year.

(f) Licensees and other entities may submit the FFD program performance data in a consolidated report, as long as the report presents the data separately for each site.

(g) Each C/V who maintains a licensee-approved drug and alcohol testing program is subject to the reporting requirements of this section and shall submit the required

information either directly to the NRC or through the licensee(s) or other entities to whom the C/V provided services during the year. Licensees, other entities, and C/Vs shall share information to ensure that the information is reported completely and is not duplicated in reports submitted to the NRC.

§ 26.219 Reporting requirements.

(a) *Required reports.* Each licensee and entity who is subject to this part shall inform the NRC of significant violations of the FFD policy, significant FFD program failures, and errors in drug and alcohol testing. These events must be reported under this section, rather than under the provisions of 10 CFR 73.71.

(b) *Significant FFD policy violations or programmatic failures.* The following significant FFD policy violations and programmatic failures must be reported to the NRC Operations Center by telephone within 24 hours after the licensee or other entity discovers the violation:

(1) The use, sale, distribution, possession, or presence of illegal drugs, or the consumption or presence of alcohol within a protected area;

(2) Any acts by any person licensed under 10 CFR Parts 52 and/or 55 to operate a power reactor, as well as any acts by SSNM transporters, FFD program personnel, or any supervisory personnel who are authorized under this part, if such acts—

(i) Involve the use, sale, or possession of a controlled substance;

(ii) Result in a determination that the individual has violated the licensee's or other entity's FFD policy (including subversion as defined in § 26.5); or

(iii) Involve the consumption of alcohol within a protected area or while performing the job duties that require the individual to be subject to this part;

(3) Any intentional act that casts doubt on the integrity of the FFD program; and

(4) Any programmatic failure, degradation, or discovered vulnerability of the FFD program that may permit undetected drug or alcohol use or abuse by individuals within a protected area, or by individuals who are assigned to perform job duties that require them to be subject to this part.

(c) *Drug and alcohol testing errors.* (1) Within 30 days of completing an investigation of any testing errors or unsatisfactory performance discovered in blind performance testing at either a licensee testing facility or an HHS-certified laboratory, in the testing of actual specimens, or through the processing of reviews under § 26.39 and MRO reviews under § 26.185, as well as any other errors or matters that could adversely reflect on the integrity of the random selection or testing process, the licensee or other entity shall submit to the NRC a report of the incident and corrective actions taken or planned. If the error involves an HHS-certified laboratory, the NRC shall ensure that HHS is notified of the finding.

(2) Should a false positive error occur on a blind performance test sample submitted to an HHS-certified laboratory, the licensee or other entity shall notify the NRC within 24 hours after discovery of the error.

(3) Should a false negative error occur on a quality assurance check of validity screening devices, as required in § 26.137(b)(2) and (3), the licensee or other entity shall notify the NRC within 24 hours after discovery of the error.

(d) *Indicators of programmatic weaknesses.* Licensees and other entities shall document, trend, and correct non-reportable indicators of FFD programmatic weaknesses under the licensee's or other entity's corrective action program, but may not track or trend drug and alcohol test results in a manner that would permit the identification of any individuals.

Subpart K—Inspections, Violations, and Penalties

§ 26.221 Inspections.

(a) Each licensee and other entity who is subject to this part shall permit duly authorized NRC representatives to inspect, copy, or take away copies of its records and to inspect its premises, activities, and personnel as may be necessary to accomplish the purposes of this part.

(b) Written agreements between licensees or other entities and their C/Vs must clearly show that—

(1) The licensee or other entity is responsible to the NRC for maintaining an effective FFD program in accordance with this part; and

(2) Duly authorized NRC representatives may inspect, copy, or take away copies of any licensee's, other entity's, or C/V's documents, records, and reports related to implementation of the licensee's or other entity's FFD program under the scope of the contracted activities.

§ 26.223 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) Any regulation or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act of 1954, for violations of—

(1) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these sections;

(4) Any term, condition, or limitation of any license issued under these sections; or

(5) Any provisions for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

§ 26.225 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all of the regulations in Part 26 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in Part 26 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 26.1, 26.3, 26.5, 26.7, 26.8, 26.9, 26.11, 26.51, 26.81, 26.121, 26.151, 26.181, 26.195, 26.223, and 26.225.

Dated at Rockville, Maryland, this 2nd day of August 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

Appendix—Tables 1 and 2

Note: This appendix will not appear in The Code of Federal Regulations.

Note: The Proposed Rule constitutes a complete revision of Part 26. Substantial changes frequently have been made between the new section in the proposed rule and the derivation listed in Table 1.

TABLE 1.—DERIVATION TABLE FOR PART 26

New section	Based on
26.1	26.1 first sentence.
26.3(a)	26.2(a).
26.3(b)	26.1 (2nd sentence) and 26.2(a) (1st sentence).
26.3(c)	26.2(d).
26.3(d)	26.23(a)(1).
26.3(e)	26.2(c).
26.3(f)	26.2(b).
26.5	26.3 and Appendix A Subpart 1.2.
26.7	26.4.
26.8	26.8.
26.9	26.6.
26.11	NEW.
26.21	26.23(b).
26.23(a)	26.10(a).
26.23(b)	26.10(a).
26.23(c)	26.10(b).
26.23(d)	26.10(c).
26.23(e)	NEW.
26.25(a)(1)	26.2(a) and 26.2(d).
26.25(a)(2)	26.2(a) and 26.2(d).
26.25(a)(3)	26.2(a) and 26.2(d).
26.25(a)(4)	NEW.
26.25(b)(1)	NEW.
26.25(b)(2)	26.2(b).
26.25(b)(3)	26.2(b).
26.25(c)	NEW.
26.25(d)	NEW.
26.27(a)	26.20 1st paragraph.
26.27(b)(1)	26.20(a).
26.27(b)(2)	NEW.
26.27(b)(3)	NEW.
26.27(b)(4)(i)	26.20(a)(1).
26.27(b)(4)(ii)	26.20(a)(2).
26.27(b)(5)	NEW.
26.27(b)(6)	26.20(a).
26.27(b)(7)	26.20(b).
26.27(b)(8)	26.20(d).
26.27(b)(9)	NEW.
26.27(b)(10)	NEW.
26.27(b)(11)	NEW.
26.27(c)	26.20(d).
26.29	26.21.
26.31	26.24.
26.33	26.22.
26.35	26.25.
26.37	26.29.
26.39	26.27.
26.41	26.80.
26.51	26.1.
26.53	NEW.
26.55(a)	26.27(a).
26.55(b)	NEW.
26.57(a)	NEW.
26.57(b)	NEW.
26.59	NEW.
26.61(a)	26.27(a)(1).
26.61(b)	26.27(a)(2).
26.61(c)	NEW.
26.61(d)	26.27(a)(4).
26.63(a)	NEW.
26.63(b)	NEW.
26.63(c)	NEW.
26.63(d)	26.27(a)(3).
26.63(e)	NEW.
26.63(f)(1)	26.71(c) and 26.27(b)(2)(vii).
26.63(f)(2)	NEW.
26.63(f)(3)	NEW.
26.65(a)	NEW.
26.65(b)	NEW.
26.65(c)(1)	26.24(a)(1).
26.65(c)(2)	NEW.
26.65(d)	NEW.

TABLE 1.—DERIVATION TABLE FOR PART 26—Continued

New section	Based on
26.65(e)	NEW.
26.65(f)	NEW.
26.65(g)	NEW.
26.65(h)	Appendix A Subpart B 2.9(c) and 26.27(a)(2).
26.67(a)	NEW.
26.67(b)	NEW.
26.67(c)	Appendix A Subpart B 2.9(c) and 26.27(a)(2).
26.69(a)	NEW.
26.69(b)(1)	26.27(b)(4).
26.69(b)(2)	NEW.
26.69(b)(3)	26.27(b)(4).
26.69(b)(4)	NEW.
26.69(b)(5)	NEW.
26.69(b)(6)	26.27(b)(4).
26.69(b)(7)	26.27(b)(4).
26.69(c)(1)	26.27(a)(3).
26.69(c)(2)	NEW.
26.69(c)(3)	26.27(a)(3).
26.69(c)(4)	NEW.
26.69(c)(5)	NEW.
26.69(d)	NEW.
26.69(e)	NEW.
26.69(f)	26.27(a)(2).
26.71	NEW.
26.75(a) (1st sentence)	NEW.
26.75(a) (2nd sentence)	26.27(b) (1st sentence).
26.75(b)	NEW.
26.75(c)	26.27(b)(3).
26.75(d)	26.27(c).
26.75(e)	26.27(b)(2).
26.75(f)	26.27(b)(5).
26.75(g)	26.27(b)(4).
26.75(h)	26.24(d)(2).
26.77(a)	NEW.
26.77(b)(1)	26.27(b)(1).
26.77(b)(2)	NEW.
26.77(b)(3)	NEW.
26.77(c)	26.27(d).
26.81	NEW.
26.83(a)	NEW.
26.83(b)	26.24(b).
26.85(a)	Appendix A Subpart B 2.2(d).
26.85(b)	NEW.
26.85(c)	Appendix A Subpart B 2.2(d)(2) (last sentence).
26.87(a)	Appendix A Subpart B 2.4(a).
26.87(b)	Appendix A Subpart B 2.4(f) (1st sentence).
26.87(c)	Appendix A Subpart B 2.7(m).
26.87(d)	Appendix A Subpart B 2.4(c).
26.87(d)(1)	Appendix A Subpart B 2.4(e).
26.87(d)(2)	Appendix A Subpart B 2.4(c) (2nd sentence).
26.87(d)(3)	Appendix A Subpart B 2.4(c).
26.87(e)	Appendix A Subpart B 2.4(g)(1).
26.87(f)(1)	Appendix A Subpart B 2.4(c).
26.87(f)(2)	Appendix A Subpart B 2.4(c).
26.87(f)(3)	Appendix A Subpart B 2.4(c).
26.87(f)(4)	NEW.
26.87(f)(5)	Appendix A Subpart B 2.4(c)(2).
26.89	NEW.
26.91	NEW.
26.93	Appendix A Subpart B 2.4 and new material.
26.95	NEW.
26.97	NEW.
26.99	Appendix A Subpart B 2.4 and new material.
26.101	Appendix A Subpart B 2.4 and new material.
26.103	NEW.
26.105	Appendix A Subpart B 2.4 and new material.
26.107	Appendix A Subpart B 2.4 and new material.
26.109	NEW.
26.111	NEW.
26.113	Appendix A Subpart B 2.4 and new material.
26.115	Appendix A Subpart B 2.4 and new material.
26.117	Appendix A Subpart B 2.4 and new material.

TABLE 1.—DERIVATION TABLE FOR PART 26—Continued

New section	Based on
26.119	Appendix A Subpart B 2.4 and new material.
26.121	NEW.
26.123	NEW.
26.133	Appendix A Subpart B 2.7(e)(1).
26.125(a)	Appendix A Subpart B 2.6(a).
26.125(b)	Appendix A Subpart B 2.6(b).
26.125(c)	Appendix A Subpart B 2.6(c).
26.127(a)	Appendix A Subpart B 2.2 1st paragraph.
26.127(b)	Appendix A Subpart B 2.2(a) and 2.4(d).
26.127(b)	Appendix A Subpart B 2.4(d).
26.127(c)	Appendix A Subpart B 2.7(o)(1).
26.127(d)	Appendix A Subpart B 2.2(d).
26.127(e)	Appendix A Subpart B 2.7(o)(3)(iii).
26.129(a)	Appendix A Subpart B 2.4(c) and 2.7(a)(1).
26.129(b)	Appendix A Subpart B 2.2(b).
26.129(c)	Appendix A Subpart B 2.7(b)(2).
26.129(d)	Appendix A Subpart B 2.7(a)(2).
26.129(e)	Appendix A Subpart B 2.7(d) 1st sentence.
26.129(f)	Appendix A Subpart B 2.7(c).
26.129(g)	Appendix A Subpart B 2.4(i).
26.129(h)	NEW.
26.131	Appendix A Subpart B 2.4(e).
26.133	Appendix A Subpart B 2.7.
26.135	Appendix A Subpart B 2.7(j).
26.137	Appendix A Subpart B 2.8(a).
26.137(e)(4–5)	Appendix A Subpart B 2.8(b).
26.137(e)(6–8)	Appendix A Subpart B 2.8(c).
26.137(f)	Appendix A Subpart B 2.8(e)(6).
26.137(g)	Appendix A Subpart B 2.7(o).
26.137(h)	Appendix A Subpart B 2.7(o).
26.139(a)	Appendix A Subpart B 2.7(g)(2).
26.139(b)	26.24(d)(1).
26.139(c)	Appendix A Subpart B 2.7(o)(5).
26.139(d)	Appendix A Subpart B 2.7(g)(6).
26.139(e)	Appendix A Subpart B 2.7(g)(7).
26.139(f)	NEW.
26.151	NEW.
26.153(a)	26.24(f) and Appendix A Subpart D 4.1.
26.153(b)	Appendix A Subpart B 2.7(l)(2).
26.153(c)	Appendix A Subpart B 2.7(k).
26.153(d)	Appendix A Subpart A 1.1(2).
26.153(f)(5)	Appendix A Subpart B 2.3(1).
26.153(f) 1st paragraph	Appendix A Subpart B 2.3 1st paragraph.
26.155	Appendix A Subpart B 2.5.
26.157(a)	Appendix A Subpart B 2.2 1st paragraph.
26.157(b)	Appendix A Subpart B 2.2(a) and 2.4(d).
26.157(c)	Appendix A Subpart B 2.7(o)(1).
26.157(d)	Appendix A Subpart B 2.2(d).
26.157(e)	Appendix A Subpart B 2.7(o)(3)(iii).
26.159(a)	Appendix A Subpart B 2.4(c) and 2.7(a)(1).
26.159(b)	Appendix A Subpart B 2.2(b).
26.159(c)	Appendix A Subpart B 2.7(b)(2).
26.159(d)	Appendix A Subpart B 2.7(a)(2).
26.159(e)	Appendix A Subpart B 2.7(a)(2).
26.159(f)	Appendix A Subpart B 2.4(i).
26.159(g)	NEW.
26.161	NEW.
26.163	Appendix A Subpart B 2.7(e)(1) (substantially revised).
26.165	Appendix A Subpart B 2.7(j) (substantially revised).
26.167(a) through (g)	Appendix A Subpart B 2.8 (substantially revised).
26.167(h)	Appendix A Subpart B 2.7(o)(3)(i).
26.167(i)	Appendix A Subpart B 2.8(d).
26.169	Appendix A Subpart B 2.7(g) (substantially revised).
26.181	NEW.
26.183(a)	26.3 and Appendix A Subpart A 1.2 and Appendix. A Subpart B 2.9(b).
26.183(b)	NEW.
26.183(b)1st sentence	Appendix A Subpart B 2.9(b) 1st sentence.
26.183(c)	26.3 and Appendix A Subparts A 1.2,B 2.4 (J),B 2.9(a), and b 2.9(b).
26.183(d)	NEW.
26.185(a)	Appendix A Subpart B 2.9(a).
26.185(b)	Appendix A Subpart B 2.9(a) last sentence.
26.185(c)	Appendix A Subpart B 2.9(c).

TABLE 1.—DERIVATION TABLE FOR PART 26—Continued

New section	Based on
26.185(d)	NEW (more detailed than Appendix A Subpart B 2.9(c)).
26.185(e)	NEW.
26.185(f)	NEW.
26.185(g)	NEW.
26.185(h)	NEW.
26.185(i)	NEW.
26.185(j)(1)	Appendix A Subpart B 2.9(d).
26.185(j)(2)	Appendix A Subpart B 2.9(d).
26.185(j)(3)	NEW.
26.185(j)(4)	NEW.
26.185(j)(5)	NEW.
26.185(j)(6)	NEW.
26.185(k)	Appendix A Subpart B 2.9(f).
26.185(l)	Appendix A Subpart B 2.9(e).
26.185(m)	Appendix A Subpart B 2.9(g).
26.185(n)	NEW.
26.185(o)	NEW.
26.185(p)	26.24(e).
26.187	NEW.
26.189	NEW.
26.195	NEW.
26.197	NEW.
26.199	NEW.
26.201	NEW.
26.211(a)	NEW.
26.211(b)	NEW.
26.213(a)(1)	26.71(a).
26.213(a)(2)	26.71(b).
26.213(a)(3)	NEW.
26.213(a)(4)	NEW.
26.213(b)(1)	26.21(b), 26.22(c), and 26.80(c).
26.213(b)(2)	26.21(b), 26.22(c), and 26.80(c).
26.213(c)	26.71(c).
26.213(d)	26.2.
26.213(e)	26.23(a).
26.213(f)	NEW.
26.213(g)	NEW.
26.215(a)	Appendix A Subpart B 2.7(n).
26.215(b)	NEW.
26.217(a)	26.71(d).
26.217(b)	26.71(d).
26.217(c)	26.71(d).
26.217(d)	26.71(d).
26.217(e)	26.71(d).
26.217(f)	26.71(d).
26.217(g)	NEW.
26.219(a)	NEW.
26.219(b)(1)	26.73(a)(1).
26.219(b)(2)(i)	26.73(a)(2)(i).
26.219(b)(2)(ii)	26.73(a)(2)(ii) + (iv) combined.
26.219(b)(2)(iii)	26.73(a)(2)(iii).
26.219(b)(3)	NEW.
26.219(b)(4)	NEW.
26.219(c)(1)	Appendix A Subpart B 2.8(e)(4).
26.219(c)(2)	Appendix A Subpart B 2.8(e)(5).
26.219(c)(3)	NEW.
26.219(d)	NEW.

TABLE 2.—DISTRIBUTION TABLE FOR PART 26

Current section	Replaced by:
26.1 (from beginning to ‘‘programs’’)	26.1.
26.1 (following ‘‘programs’’)	Deleted.
26.2(a) (first clause)	26.2(a) (to ‘‘and’’).
26.2(a) (balance of 1st sentence)	26.2(b) (from ‘‘to’’ to end).
26.2(a) (2nd sentence)	26.21 (1st sentence).
26.2(a) (3rd sentence to end)	26.25(a) (1)(2) and (3).
26.2(b) (1st sentence)	26.25(a).
26.2(b) (2nd sentence to end)	26.3(f).
26.2(c) (1st sentence)	26.3(e).

TABLE 2.—DISTRIBUTION TABLE FOR PART 26—Continued

Current section	Replaced by:
26.2(c) (from "shall implement" to end)	26.3(f).
26.2(d)	26.3(c).
26.3	26.5.
26.4	26.7.
26.6	26.9.
26.8	26.13.
26.10(a) (from beginning through "manner")	26.23(a).
26.10(a) (balance of 1st sentence)	26.23(b).
26.10(b)	26.23(c).
26.10(c)	26.23(d).
26.20 (introductory paragraph, 1st sentence)	26.27(a).
26.20 (introductory paragraph, 2nd sentence)	26.213(d).
26.20 (introductory paragraph, final sentence)	26.27(b) (sentence before "(1)").
26.20(a)	26.27(b).
26.20(b)	26.27(b)(7).
26.20(c)	26.27(c)(1).
26.20(d)	26.27(c)(2).
26.20(e)	26.27(c)(3).
26.20(f)	26.27(d).
26.21(a)	26.29(a).
26.21(b)	26.29(c).
26.21(b) (last sentence)	26.213(b)(1).
26.22	Deleted.
26.23(a)	26.3(d) and 26.21.
26.23(b)	26.21.
26.24(a) (first sentence to "(1)")	26.31(a).
26.24(a) (balance of paragraph)	26.31(c) (substantially revised).
26.24(b)	Subparts E, F, and G.
26.24(c)	26.31(d).
26.24(d)	Subparts E, F, and G.
26.24(e)	Subpart H.
26.24(f)	26.31(d)(3) and requirements in Subpart G.
26.24(g)	26.31(d)(4) and Subparts E, F, and G.
26.25	26.35.
26.27(a)	Subpart C.
26.27(b)	Subpart D.
26.27(c)	Subpart D.
26.27(d)	26.77(c).
26.28	26.39.
26.29	26.37.
26.70	26.221.
26.71	26.211, 26.213, and 26.215.
26.73	26.219 (substantially revised).
26.80	26.41 (substantially revised).
26.90	26.223.
26.91	26.225.
Appendix A Subpart A, 1.1(1)	26.3.
Appendix A Subpart A, 1.1(2)	26.31(d) (substantially revised).
Appendix A Subpart A, 1.1(3)	Subparts F and G.
Appendix A Subpart A, 1.2	26.5.
Appendix A Subpart B, 2.1(a)	26.31(d)(1).
Appendix A Subpart B, 2.1(b)	26.31(d)(1).
Appendix A Subpart B.2.1(c)	Subparts E, F, and G.
Appendix A Subpart B.2.1(d)	26.31(d)(6).
Appendix A Subpart B.2.1(e)	26.31.
Appendix A Subpart B.2.2 (Initial paragraph)	Subparts F and G.
Appendix A Subpart B.2.2(a), (b), and (c)	26.115, 26.117, 26.129, 26.159, 26.169.
Appendix A Subpart B.2.2(d)(1), (2), and (3)	26.85.
Appendix A Subpart B.2.2(d)(4)	Deleted.
Appendix A Subpart B.2.3	26.31(b), and requirements in Subparts E, F, and G.
Appendix A Subpart B.2.4(a)	26.87(a).
Appendix A Subpart B.2.4(b)	26.85.
Appendix A Subpart B.2.4(c)	26.87(d) and (f).
Appendix A Subpart B 2.4(d)	26.117.
Appendix A Subpart B 2.4(e)	26.87(d)(1).
Appendix A Subpart B 2.4(f) 1st sentence	26.87(b).
Appendix A Subpart B 2.4(f)(1) through (f)(4)	26.95 through 26.115 and Subparts F and G.
Appendix A Subpart B 2.4(g)(1) through (g)(24)	Subparts E, F, and G.
Appendix A Subpart B 2.4(h) (1st sentence)	26.87(f)(5).
Appendix A Subpart B 2.4(h) (balance of section)	26.113, 26.117, and 26.135.
Appendix A Subpart B 2.4(i)	26.117.
Appendix A Subpart B 2.4(j) (first two sentences)	26.115 and 26.185.

TABLE 2.—DISTRIBUTION TABLE FOR PART 26—Continued

Current section	Replaced by:
Appendix A Subpart B 2.4(j) (final sentence)	Deleted.
Appendix A Subpart B 2.5(a)	26.155(a).
Appendix A Subpart B 2.5(b)	26.153.
Appendix A Subpart B 2.5(c)	26.155(c).
Appendix A Subpart B 2.5(d)	26.155(d).
Appendix A Subpart B 2.5(e)	26.155(e).
Appendix A Subpart B 2.5(f)	26.155(f).
Appendix A Subpart B 2.6(a)	26.125(a).
Appendix A Subpart B 2.6(b)	26.125(b).
Appendix A Subpart B 2.6(c)	26.125(c).
Appendix A Subpart B 2.7(a)	26.127, 26.129, 26.157, and 26.159.
Appendix A Subpart B 2.7(b)	26.129(b) and 26.159(b).
Appendix A Subpart B 2.7(c)	26.129(f) and 26.159(h).
Appendix A Subpart B 2.7(d)	26.157 and 26.159.
Appendix A Subpart B 2.7(e)	Validity screening and initial validity test requirements in 26.131 and 26.161 and initial cutoff levels in 26.133 and 26.163(a).
Appendix A Subpart B 2.7(f)	26.163(b).
Appendix A Subpart B 2.7(g)(1) through (5)	26.169.
Appendix A Subpart B 2.7(g)(6) and (7)	Requirement for annual summary in 26.169(k).
Appendix A Subpart B 2.7(g)(8)	26.215.
Appendix A Subpart B 2.7(h)	26.159(i) and by 26.135(c).
Appendix A Subpart B 2.7(i)	Subparts F and G.
Appendix A Subpart B 2.7(j)	26.113, 26.135, 26.165.
Appendix A Subpart B 2.7(k)	26.153(c).
Appendix A Subpart B 2.7(l)	26.153((f)(1) and 26.153(b).
Appendix A Subpart B 2.7(m)	26.87(c) and 26.221.
Appendix A Subpart B 2.7(n)	26.215(a).
Appendix A Subpart B 2.7(o)(1)	26.127(c) and 26.157(c).
Appendix A Subpart B 2.7(o)(2), (o)(3), and (o)(4)	26.137 and 26.167.
Appendix A Subpart B 2.7(o)(5)	26.139(c) and 26.153(f)(2).
Appendix A Subpart B 2.8(a)	26.137(a) and 26.167(a).
Appendix A Subpart B 2.8(b)	26.137.
Appendix A Subpart B 2.8(c)	26.167.
Appendix A Subpart B 2.8(d)	26.137 and 26.167.
Appendix A Subpart B 2.8(e)(1) to (e)(3)	26.137.
Appendix A Subpart B 2.8(e)(4), (e)(5), and (e)(6)	26.137 and 26.219.
Appendix A Subpart B 2.9(a) and (b) (through ‘‘contract employee’’)	26.183.
Appendix A Subpart B 2.9(b) (balance of section), (c), (d), (e), (f), and (g).	26.185.
Appendix A Subpart C 3.1	26.37(e) and 26.153(f)(3).
Appendix A Subpart C 3.2	26.75(i)(4), 26.165(f).
Appendix A Subpart D 4.1	26.153.

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Pages 50679–50948

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 419 and 485

Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Correction; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 419 and 485

[CMS–1501–CN]

RIN 0938–AN46

Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors that appeared in the proposed rule published in the **Federal Register** on July 25, 2005 entitled ''Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2006 Payment Rates; Proposed Rule.''

FOR FURTHER INFORMATION CONTACT: Rebecca Kane, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 05–14448 contains our proposed rule to update the Medicare Outpatient Prospective Payment System for calendar year (CY) 2006. We have identified a number of technical errors in the ''Summary of Errors'' section and are correcting them in the ''Correction of Errors'' section below.

II. Summary of Errors

A. Corrections Related to the Rural Adjustment Calculation

The calendar year (CY) 2006 Outpatient Prospective Payment System (OPPS) proposed rule that we published in the **Federal Register** on July 25, 2005 included a proposed 6.6 percent adjustment for rural sole community hospitals. The calculations used to develop the conversion factor and budget neutrality scalar inadvertently incorporated this adjustment as 6.4 percent. The rural adjustment is used in calculations that determine the scalar and conversion factor, and therefore affects the payment rates and copayment amounts published in the proposed rule. The corrected scalar is 1.003753831, and the corrected conversion factor is $59.343. The various changes to the preamble are specified under section III. of this correction notice. In addition to preamble text changes, we are correcting specific tables and addenda which also reflected the inadvertent use of a 6.4 percent rural adjustment factor, which we have described below.

On page 42709, we published Table 11. We are correcting the last column of this table to present the corrected proposed CY 2006 payment amounts. In section III. of this notice, we republish Table 11 as corrected.

On pages 42761–42762, we published Table 33. In section III. of this notice, we republish Table 33 as corrected.

On pages 42764–42775, we published Addendum A, which provides the payment rates and copayment amounts for Ambulatory Payment Classification (APC) groups used for payment purposes under the OPPS. A corrected Addendum A is posted on the OPPS Web site at *http://www.cms.hhs.gov/providers/hopps/2006p/1501p.asp.*

On pages 42776–42965, we published Addendum B, which provides the payment rates and copayment amounts for services payable under OPPS. A corrected Addendum B, including additional technical errors affecting HCPCS codes 78814, 78815, 78816, 91035, and 95950 is posted on the OPPS Web site at *http://www.cms.hhs.gov/providers/hopps/2006p/1501p.asp.*

We are posting the corrected Addendum A and Addendum B on our Web site rather than publishing them in this notice because of the large volume of data included in these addenda. Hard copies of these tables are available by contacting the CMS staff member identified above.

We note that as soon as we discovered these inadvertent errors that affected the payment rates noted in the proposed rule, we posted the corrections on the CMS Web site at: *http://www.cms.hhs.gov/providers/hopps/2006p/1501p.asp.*

B. Other Corrections

We also noted other typographical, formatting, and other technical errors in the proposed rule.

On page 42714, we published Table 15. The proposed ''unadjusted'' and ''adjusted'' CY 2006 APC median cost for APC 0085 Level II Electrophysiologic Evaluation contained a typographical error and should read $2,123.38. We are correcting this under section III. of this notice.

On page 42761, column 2 includes a comparison that discusses the differences in copayments from CY 2005 to CY 2006. While the analysis of this example is correct, the example incorrectly identifies the comparison as being the ''minimum unadjusted copayment'' rather than the ''national unadjusted copayment''. We are making this correction under section III. of this notice to refer to the ''national unadjusted copayment''.

On page 42737, we published Table 26, which inadvertently excluded C2636 (Brachytherapy linear source, Palladium –103, per 1 mm) which was accurately described in the text of page 42736 as a proposed separately payable brachytherapy source. In section III. of the notice we append the excluded row to correct table 26 as published.

The other technical, typographical, formatting, and other errors that appeared on various other pages of the **Federal Register** are corrected as noted in section III. of this notice.

III. Correction of Errors

In FR Doc. 05–14448 of July 25, 2005 (70 FR 42674), make the following corrections:

1. On page 42690, in column 3, in the last paragraph, in line 20, the figure ''0.999207669'' is corrected to read ''1.003753831''.

2. On page 42691, in column 1, in the second full paragraph, line 8, the year ''2006'' is corrected to read ''2007''.

3. On page 42694,

a. In column 1, in the second full paragraph, in line 8, the figure ''$240.51'' is corrected to read ''$241.57''.

b. In column 1, in the second full paragraph, in line 8, the figure ''$48.10'' is corrected to read ''$48.31''.

c. In column 3, in the third full paragraph, in line 8, the figure ''1.002015212'' is corrected to read ''1.002023412''.

d. In column 3, in the third full paragraph, in line 18, the figure ''0.99652023'' is corrected to read ''0.99639633''.

e. In column 3, in the last partial paragraph, in line 5, the figure ''1.002015212'' is corrected to read ''1.002023412''.

4. On page 42695,

a. In column 1, in the first partial paragraph, in line 5, the figure ''0.99652023'' is corrected to read ''0.99639633''.

b. In column 1, in the first partial paragraph, in line 7, the figure ''$59.350'' is corrected to read ''$59.343''.

5. On page 42703,

a. In column 1, in the second full paragraph, in line 5, the figure ''$9.95'' is corrected to read ''$7.00''.

b. In column 1, in the second full paragraph, in line 5, the figure ''40'' is corrected to read ''28''.

c. In column 1, in the second full paragraph, in line 6, the figure ''$24.89'' is corrected to read ''$25.00''.

6. On page 42709,

a. In column 1, in the first full paragraph, in line 22, the figure ''$1,297'' is corrected to read ''$1,274''.

b. In column 1, in the first full paragraph, in line 23, the figure ''$1,366'' is corrected to read ''$1,244''.

c. In column 1, in the first full paragraph, in line 25, the figure ''$1,100'' is corrected to read ''$1,025''.

d. Table 11 is corrected to read as follows:

TABLE 11.—PROPOSED APC REASSIGNMENT OF NEW TECHNOLOGY PROCEDURES INTO CLINICAL APCS FOR CY 2006

HCPCS	Descriptor	CY 2005 APC	CY 2005 status indicator	Proposed CY 2006 APC	Proposed CY 2006 status indicator	CY 2005 payment amount	Proposed CY 2006 payment amount
0027T	Endoscopic epidural lysis	1547	T	0220	T	$850	$1,030.11
33225	L ventric pacing lead add-on	1525	S	0418	T	3,750	6,486.45
61623	Endovasc tempory vessel occl	1555	T	0081	T	1,650	2,044.21
92974	Cath place, cardio brachytx	1559	T	0103	T	2,250	873.18
93580	Transcath closure of asd	1559	T	0434	T	2,250	5,387.61
93581	Transcath closure of vsd	1559	T	0434	T	2,250	5,387.61
95965	Meg, spontaneous	1528	S	0430	T	5,250	676.75
95966	Meg, evoked, single	1516	S	0430	T	1,450	676.75
95967	Meg, evoked, each add'l	1511	S	0430	T	950	676.75
C9713	Non-contact laser vap prosta	1525	S	0429	T	3,750	2,511.08

7. On page 42710, in column 2, in the first full paragraph, in line 19, the figure ''$93.71'' is corrected to read ''$93.37''.

8. On page 42714, Table 15, APC 0085, in columns 5 and 7, in row 7, both occurrences of the figure ''$2,123.46'' are corrected to read ''$2,123.38''.

9. On page 42737, Table 26, ''Proposed Separately payable Brachytherapy Sources for CY 2006'' is appended with the following row:

HCPCS	Long descriptor	APC	APC title	New status indicator
C2636	Brachytherapy linear source, Palladium–103, per 1mm	2636	Brachytx linear source, P–103	H

10. On page 42756, in column 1, in the first partial paragraph, in line 5, the figure ''1.8'' is corrected to read ''1.7''.

11. On page 42758, in column 2, in the third full paragraph, in line 13, the figure ''$59.35'' is corrected to read ''$59.34''.

12. On page 42759,

a. In column 1, in the first partial paragraph, in line 21, the figure ''5.8'' is corrected to read ''5.6''.

b. In column 1, in the first partial paragraph, in line 31, the figure ''1.2'' is corrected to read ''1.3''.

c. In column 1, in the first partial paragraph, in line 31, the figure ''1.8'' is corrected to read ''1.7''.

d. In column 1, in the first partial paragraph, in line 36, the figure ''2.6'' is corrected to read ''2.5''.

e. In column 1, in the second partial paragraph, in line 22, the figure ''2.9'' is corrected to read ''2.7''.

f. In column 1, in the second partial paragraph, in line 25, the figure ''0.7'' is corrected to read ''0.6''.

g. In column 1, in the second partial paragraph, in line 30, the text ''West South Central'' is corrected to read ''New England''.

h. In column 2, in the first partial paragraph, in line 2, the figure ''1.9'' is corrected to read ''1.7''.

i. In column 2, in the first partial paragraph, in line 2, the figure ''1.8'' is corrected to read ''1.6''.

j. In column 2, in the first full paragraph, in line 4, the figure ''0.4'' is corrected to read ''0.3''.

k. In column 2, in the first full paragraph, in line 5, the figure ''0.5'' is corrected to read ''0.3''.

l. In column 2, in the first full paragraph, in line 9, the figure ''0.9'' is corrected to read ''1.6''.

m. In column 2, in the first full paragraph, in line 10, the figure ''1.4'' is corrected to read ''2.2''.

n. In column 2, in the first full paragraph, in line 21, the sentence portion ''1.3 percent and voluntary and government hospitals will gain at least 0.1 percent.'' is corrected to read ''1.1 percent, voluntary hospitals would gain 0.2 percent, and government hospitals will see no changes as a result of changes to APC structure.''

o. In column 3, in the second full paragraph, in line 7, the figure ''0.997'' is corrected to read ''0.996''.

p. In column 3, in the second full paragraph, in line 10, the figure ''0.3'' is corrected to read ''0.4''.

q. In column 3, in the second full paragraph, in line 13, the figure ''5.2'' is corrected to read ''5.4''.

13. On page 42760,

a. In column 1, in the first partial paragraph, in line 6, the figure ''0.3'' is corrected to read ''0.4''.

b. In column 1, in the first full paragraph, in line 19, the figure ''5.8'' is corrected to read ''5.6''.

c. In column 1, in the first full paragraph, in line 24, the figure ''–2.8'' is corrected to read ''–2.4''.

d. In column 1, in the first full paragraph, in line 32, the figure ''1.2'' is corrected to read ''1.3''.

e. In column 1, in the first full paragraph, in line 35, the figure ''0.3'' is corrected to read ''0.4''.

f. In column 1, in the first full paragraph, in line 37, the figure ''1.5'' is corrected to read ''1.4''.

g. In column 1, in the last paragraph, in line 7, the figure ''8.6'' is corrected to read ''8.7''.

h. In column 1, in the third partial paragraph, in line 12, the figure ''5.0'' is corrected to read ''4.7''.

i. In column 3, in the first partial paragraph, in line 6, the figure ''2.6'' is corrected to read ''2.5''.

j. In column 3, in the first partial paragraph, in line 12, the figure ''2.1'' is corrected to read ''1.8''.

k. In column 3, in the first partial paragraph, in line 32, the figure ''3.7'' is corrected to read ''3.6''.

l. In column 3, in the first full paragraph, in line 11, the figure ''3.4'' is corrected to read ''3.5''.

m. In column 3, in the first full paragraph, in line 13, the figure ''6.4'' is corrected to read ''6.5''.

n. In column 3, in the first full paragraph, in line 30, the text ''greater than'' is corrected to read ''of at least''.

o. In column 3, in the first full paragraph, in lines 33 and 34, the figure ''only 1.0'' is corrected to read ''1.4'' and the text ''and 0.8 percent, respectively.'' is appended to the end of the sentence.

14. On page 42761

a. In column 1, in the first partial paragraph, in line 3, the figure ''1.9'' is corrected to read ''2.6''.

b. In column 1, in the first partial paragraph, in line 6, the figure ''2.6'' is corrected to read ''3.4''.

c. In column 1, in the first partial paragraph, in line 11, the figure ''0.8'' is corrected to read ''0.6''.

d. In column 1, in line 12, the designation for the heading ''Estimated Impacts of This Proposed Rule on Beneficiaries'' is corrected from ''G'' to read ''F''.

e. In column 1, in the second partial paragraph, in line 12, the figure ''$11.86'' is corrected to read ''$11.91''.

f. In column 2, in the first partial paragraph, in lines 4 and 6, the term ''minimum'' is corrected to read ''national''.

g. In column 2, in the first partial paragraph, in line 8, the figure ''$223.91'' is corrected to read ''$224.91''.

h. Table 33 is corrected to read as follows:

TABLE 33.—IMPACT OF PROPOSED CHANGES FOR CY 2006 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

Hospital category	Number of hospitals	APC changes	New wage index	New adj for rural sole community hospitals	Cumulative (Cols 2,3,4) with market basket update	All changes
	(1)	(2)	(3)	(4)	(5)	(6)
ALL HOSPITALS	4212	0.0	0.0	0.0	3.2	1.9
URBAN HOSPITALS	2949	0.0	0.0	−0.4	2.8	1.6
LARGE URBAN	1624	−0.8	0.0	−0.4	2.0	0.8
OTHER URBAN	1325	1.0	0.0	−0.4	3.8	2.5
RURAL HOSPITALS	1263	−0.1	0.1	1.8	5.0	3.5
SOLE COMMUNITY	478	−0.1	0.0	5.4	8.7	6.5
OTHER RURAL	785	−0.1	0.1	−0.4	2.8	1.6
BEDS (URBAN):						
0–99 BEDS	917	0.0	0.2	−0.4	3.0	2.1
100–199 BEDS	964	−0.4	0.0	−0.4	2.5	1.5
200–299 BEDS	503	0.2	0.1	−0.4	3.2	2.4
300–499 BEDS	402	−0.1	−0.1	−0.4	2.6	1.5
500 + BEDS	163	0.3	0.0	−0.4	3.1	1.0
BEDS (RURAL):						
0–49 BEDS	551	−0.9	0.2	2.1	4.6	3.1
50–100 BEDS	419	−0.8	0.2	2.3	4.8	3.0
101–149 BEDS	180	1.4	0.0	1.1	5.8	4.7
150–199 BEDS	62	−0.2	−0.2	1.8	4.7	3.7
200 + BEDS	51	0.1	0.0	1.7	5.1	3.1
VOLUME (URBAN):						
LT 5,000 claim lines	600	−5.6	0.5	−0.4	−2.4	−1.8
5,000–10,999	180	−2.4	0.2	−0.4	0.5	0.6
11,000–20,999	299	−0.6	0.2	−0.4	2.4	2.5
21,000–42,999	575	−0.6	0.1	−0.4	2.3	1.9
GT 42,999	1295	0.2	0.0	−0.4	3.0	1.6
VOLUME (RURAL):						
LT 5,000 claim lines	119	−2.7	0.0	1.4	1.7	1.4
5,000–10,999	195	−1.9	0.0	2.1	3.4	2.4
11,000–20,999	325	−0.9	−0.1	2.0	4.3	3.4
21,000–42,999	364	−0.9	0.2	1.9	4.5	3.0
GT 42,999	260	0.6	0.0	1.7	5.7	3.8
REGION (URBAN):						
NEW ENGLAND	166	−1.3	−0.1	−0.4	1.4	−0.2
MIDDLE ATLANTIC	393	0.6	−0.1	−0.4	3.4	2.1
SOUTH ATLANTIC	453	−0.4	−0.4	−0.4	2.0	1.0
EAST NORTH CENT	466	0.4	−0.1	−0.4	3.2	1.7
EAST SOUTH CENT	197	1.5	0.0	−0.4	4.4	3.4
WEST NORTH CENT	184	2.5	−0.3	−0.4	5.1	3.6
WEST SOUTH CENT	445	−0.3	−0.1	−0.4	2.5	1.3
MOUNTAIN	163	−0.1	−0.2	−0.4	2.5	1.3
PACIFIC	431	−1.7	1.1	−0.4	2.2	1.4
PUERTO RICO	51	0.4	−0.3	−0.4	2.9	2.2
REGION (RURAL):						
NEW ENGLAND	37	−1.1	0.9	1.2	4.2	0.8
MIDDLE ATLANTIC	78	1.7	−0.4	1.4	6.0	4.1
SOUTH ATLANTIC	189	−0.4	−0.2	1.7	4.4	3.3
EAST NORTH CENT	171	−0.6	0.1	1.4	4.1	2.2
EAST SOUTH CENT	202	−0.7	0.5	0.5	3.5	3.0
WEST NORTH CENT	188	1.6	−0.3	2.6	7.2	4.7

TABLE 33.—IMPACT OF PROPOSED CHANGES FOR CY 2006 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

Hospital category	Number of hospitals	APC changes	New wage index	New adj for rural sole community hospitals	Cumulative (Cols 2,3,4) with market basket update	All changes
	(1)	(2)	(3)	(4)	(5)	(6)
WEST SOUTH CENT	242	−0.9	−0.2	2.2	4.4	3.7
MOUNTAIN	95	−1.0	0.1	4.6	7.0	5.2
PACIFIC	61	−0.7	1.8	2.7	7.2	5.3
TEACHING STATUS:						
NON-TEACHING	3115	−0.3	0.1	0.3	3.2	2.3
MINOR	769	0.3	0.0	−0.2	3.3	2.3
MAJOR	328	0.3	−0.2	−0.3	3.0	0.6
DSH PATIENT PERCENT:						
0	16	0.3	0.0	−0.4	3.1	3.1
GT 0–0.10	386	0.1	−0.2	−0.3	2.8	1.7
0.10–0.16	555	0.0	0.1	0.2	3.5	2.4
0.16–0.23	802	0.1	0.0	0.1	3.5	2.3
0.23–0.35	977	0.1	−0.1	0.0	3.2	1.9
GE 0.35	792	−0.3	0.1	−0.1	3.0	1.8
TEFRA: DSH NOT AVAIL [1]	684	−1.6	0.0	−0.4	1.2	−2.6
URBAN TEACHING/DSH:						
TEACHING & DSH	944	0.4	−0.1	−0.4	3.1	1.7
NO TEACHING/DSH	1401	−0.3	0.1	−0.4	2.5	1.8
NO TEACHING/NO DSH	16	0.3	0.0	−0.4	3.1	3.1
TEFRA: DSH NOT AVAIL [1]	588	−2.2	0.1	−0.4	0.7	−3.4
TYPE OF OWNERSHIP:						
VOLUNTARY	2397	0.2	0.0	0.0	3.3	2.0
PROPRIETARY	1091	−1.1	0.0	0.0	2.1	1.6
GOVERNMENT	724	0.0	0.1	0.2	3.6	1.7

Col (1) Total Hospitals in 2006.
Col (2) This column shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and from the addition of multiple procedure discounting for radiology procedures (budget neutral overall).
Col (3) This column shows the adjustment for updating the wage index (budget neutral overall).
Col (4) This column shows the adjustment for rural sole community hospitals (budget neutral overall).
Col (5) This column shows the cumulative impact of cols 2 through 4 and the addition of the market basket update.
Col (6) The column shows the impact of the change in MMA dollars in 2006 (drugs and 508) and outlier changes.
[1] Complete DSH numbers are not available for hospitals that are not paid under IPPS.

15. On pages 42764–42775, Addendum A is corrected to read as follows:

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0001	Level I Photochemotherapy	S	0.4213	$25.00	$7.00	$5.00
0002	Level I Fine Needle Biopsy/Aspiration	T	0.9559	$56.73		$11.35
0003	Bone Marrow Biopsy/Aspiration	T	2.6530	$157.44		$31.49
0004	Level I Needle Biopsy/ Aspiration Except Bone Marrow	T	1.7646	$104.72	$22.36	$20.94
0005	Level II Needle Biopsy/Aspiration Except Bone Marrow	T	3.5994	$213.60	$71.59	$42.72
0006	Level I Incision & Drainage	T	1.5500	$91.98	$22.28	$18.40
0007	Level II Incision & Drainage	T	11.4501	$679.48		$135.90
0008	Level III Incision and Drainage	T	16.4989	$979.09		$195.82
0009	Nail Procedures	T	0.6680	$39.64	$8.34	$7.93
0010	Level I Destruction of Lesion	T	0.5719	$33.94	$9.65	$6.79
0011	Level II Destruction of Lesion	T	2.0839	$123.66	$25.17	$24.73
0012	Level I Debridement & Destruction	T	0.8497	$50.42	$11.18	$10.08
0013	Level II Debridement & Destruction	T	1.1078	$65.74	$14.20	$13.15
0015	Level III Debridement & Destruction	T	1.6514	$98.00	$20.29	$19.60
0016	Level IV Debridement & Destruction	T	2.5834	$153.31	$33.57	$30.66
0017	Level VI Debridement & Destruction	T	18.4211	$1,093.16	$227.84	$218.63
0018	Biopsy of Skin/Puncture of Lesion	T	1.1726	$69.59	$16.04	$13.92
0019	Level I Excision/ Biopsy	T	4.0547	$240.62	$71.87	$48.12
0020	Level II Excision/ Biopsy	T	6.9433	$412.04	$107.40	$82.41
0021	Level III Excision/ Biopsy	T	14.9776	$888.82	$219.48	$177.76
0022	Level IV Excision/ Biopsy	T	19.6472	$1,165.92	$354.45	$233.18
0023	Exploration Penetrating Wound	T	4.7775	$283.51		$56.70
0024	Level I Skin Repair	T	1.6084	$95.45	$31.25	$19.09
0025	Level II Skin Repair	T	5.4938	$326.02	$101.85	$65.20
0027	Level IV Skin Repair	T	18.4182	$1,092.99	$329.72	$218.60
0028	Level I Breast Surgery	T	19.5801	$1,161.94	$303.74	$232.39
0029	Level II Breast Surgery	T	32.0476	$1,901.80	$632.64	$380.36
0030	Level III Breast Surgery	T	40.0825	$2,378.62	$763.55	$475.72
0033	Partial Hospitalization	P	4.0708	$241.57		$48.31
0035	Venous Cutdown	T	0.7158	$42.48		$8.50
0036	Level II Fine Needle Biopsy/Aspiration	T	2.1773	$129.21		$25.84
0037	Level IV Needle Biopsy/Aspiration Except Bone Marrow	T	9.4751	$562.28	$224.91	$112.46
0039	Level I Implantation of Neurostimulator	S	181.4000	$10,764.82		$2,152.96
0040	Level I Implantation of Neurostimulator Electrodes	S	55.3297	$3,283.43		$656.69
0041	Level I Arthroscopy	T	28.1318	$1,669.43		$333.89
0042	Level II Arthroscopy	T	43.9753	$2,609.63	$804.74	$521.93
0043	Closed Treatment Fracture Finger/Toe/Trunk	T	1.7694	$105.00		$21.00
0045	Bone/Joint Manipulation Under Anesthesia	T	14.4945	$860.15	$268.47	$172.03
0046	Open/Percutaneous Treatment Fracture or Dislocation	T	37.7023	$2,237.37	$535.76	$447.47
0047	Arthroplasty without Prosthesis	T	31.6107	$1,875.87	$537.03	$375.17
0048	Level I Arthroplasty with Prosthesis	T	43.1288	$2,559.39	$570.30	$511.88
0049	Level I Musculoskeletal Procedures Except Hand and Foot	T	20.3707	$1,208.86		$241.77
0050	Level II Musculoskeletal Procedures Except Hand and Foot	T	23.9081	$1,418.78		$283.76
0051	Level III Musculoskeletal Procedures Except Hand and Foot	T	36.5271	$2,167.63		$433.53
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	T	43.9378	$2,607.40		$521.48
0053	Level I Hand Musculoskeletal Procedures	T	15.6795	$930.47	$253.49	$186.09
0054	Level II Hand Musculoskeletal Procedures	T	25.3711	$1,505.60		$301.12
0055	Level I Foot Musculoskeletal Procedures	T	20.0692	$1,190.97	$355.34	$238.19
0056	Level II Foot Musculoskeletal Procedures	T	40.2957	$2,391.27		$478.25
0057	Bunion Procedures	T	27.5493	$1,634.86	$475.91	$326.97
0058	Level I Strapping and Cast Application	S	1.0934	$64.89		$12.98
0060	Manipulation Therapy	S	0.4935	$29.29		$5.86
0068	CPAP Initiation	S	1.2293	$72.95	$29.18	$14.59
0069	Thoracoscopy	T	30.6775	$1,820.49	$591.64	$364.10
0070	Thoracentesis/Lavage Procedures	T	3.2101	$190.50		$38.10
0071	Level I Endoscopy Upper Airway	T	0.7915	$46.97	$11.31	$9.39
0072	Level II Endoscopy Upper Airway	T	1.4361	$85.22	$21.27	$17.04
0074	Level IV Endoscopy Upper Airway	T	15.7757	$936.18	$295.70	$187.24
0075	Level V Endoscopy Upper Airway	T	21.3426	$1,266.53	$445.92	$253.31
0076	Level I Endoscopy Lower Airway	T	9.4592	$561.34	$189.82	$112.27
0077	Level I Pulmonary Treatment	S	0.3444	$20.44	$7.74	$4.09
0078	Level II Pulmonary Treatment	S	1.0236	$60.74	$14.55	$12.15
0079	Ventilation Initiation and Management	S	2.3482	$139.35		$27.87
0080	Diagnostic Cardiac Catheterization	T	37.1361	$2,203.77	$838.92	$440.75
0081	Non-Coronary Angioplasty or Atherectomy	T	34.4473	$2,044.21		$408.84
0082	Coronary Atherectomy	T	85.0126	$5,044.90	$1,085.20	$1,008.98
0083	Coronary Angioplasty and Percutaneous Valvuloplasty	T	50.8925	$3,020.11		$604.02
0084	Level I Electrophysiologic Evaluation	S	10.0205	$594.65		$118.93
0085	Level II Electrophysiologic Evaluation	T	35.1882	$2,088.17	$426.25	$417.63

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0086	Ablate Heart Dysrhythm Focus	T	44.2596	$2,626.50	$833.33	$525.30
0087	Cardiac Electrophysiologic Recording/Mapping	T	30.7101	$1,822.43		$364.49
0088	Thrombectomy	T	36.5617	$2,169.68	$655.22	$433.94
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.	T	105.6143	$6,267.47	$1,682.28	$1,253.49
0090	Insertion/Replacement of Pacemaker Pulse Generator	T	89.1574	$5,290.87	$1,612.80	$1,058.17
0091	Level II Vascular Ligation	T	28.9999	$1,720.94	$348.23	$344.19
0092	Level I Vascular Ligation	T	23.4516	$1,391.69		$278.34
0093	Vascular Reconstruction/Fistula Repair without Device					
0094	Level I Resuscitation and Cardioversion	S	2.5363	$150.51	$47.62	$30.10
0095	Cardiac Rehabilitation	S	0.5885	$34.92	$13.96	$6.98
0096	Non-Invasive Vascular Studies	S	1.6307	$96.77	$38.70	$19.35
0097	Cardiac and Ambulatory Blood Pressure Monitoring	X	1.0223	$60.67	$23.79	$12.13
0098	Injection of Sclerosing Solution	T	1.1346	$67.33		$13.47
0099	Electrocardiograms	S	0.3821	$22.67		$4.53
0100	Cardiac Stress Tests	X	2.4968	$148.17	$41.44	$29.63
0101	Tilt Table Evaluation	S	4.2787	$253.91	$101.56	$50.78
0103	Miscellaneous Vascular Procedures	T	14.7142	$873.18	$223.63	$174.64
0104	Transcatheter Placement of Intracoronary Stents	T	79.0094	$4,688.65		$937.73
0105	Revision/Removal of Pacemakers, AICD, or Vascular	T	22.3685	$1,327.41	$370.40	$265.48
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes	T	45.4851	$2,699.22		$539.84
0107	Insertion of Cardioverter-Defibrillator	T	260.0295	$15,430.93	$3,103.22	$3,086.19
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	T	349.1681	$20,720.68		$4,144.14
0109	Removal of Implanted Devices	T	11.0433	$655.34	$131.49	$131.07
0110	Transfusion	S	3.6594	$217.16		$43.43
0111	Blood Product Exchange	S	12.3956	$735.59	$200.18	$147.12
0112	Apheresis, Photopheresis, and Plasmapheresis	S	26.7948	$1,590.08	$438.94	$318.02
0113	Excision Lymphatic System	T	21.4653	$1,273.82		$254.76
0114	Thyroid/Lymphadenectomy Procedures	T	40.7652	$2,419.13	$485.91	$483.83
0115	Cannula/Access Device Procedures	T	31.4727	$1,867.68	$459.35	$373.54
0116	Chemotherapy Administration by Other Technique Except Infusion.	S	1.1453	$67.97		$13.59
0117	Chemotherapy Administration by Infusion Only	S	3.2378	$192.14	$42.54	$38.43
0120	Infusion Therapy Except Chemotherapy	S	2.0193	$119.83	$28.21	$23.97
0121	Level I Tube changes and Repositioning	T	2.2766	$135.10	$43.80	$27.02
0122	Level II Tube changes and Repositioning	T	6.9721	$413.75	$84.85	$82.75
0123	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant.	S	22.9902	$1,364.31		$272.86
0125	Refilling of Infusion Pump	T	1.9331	$114.72		$22.94
0130	Level I Laparoscopy	T	31.9271	$1,894.65	$659.53	$378.93
0131	Level II Laparoscopy	T	43.3389	$2,571.86	$1,001.89	$514.37
0132	Level III Laparoscopy	T	62.9914	$3,738.10	$1,239.22	$747.62
0140	Esophageal Dilation without Endoscopy	T	5.4737	$324.83	$94.18	$64.97
0141	Level I Upper GI Procedures	T	8.1835	$485.63	$143.38	$97.13
0142	Small Intestine Endoscopy	T	9.3487	$554.78	$152.78	$110.96
0143	Lower GI Endoscopy	T	8.6869	$515.51	$186.06	$103.10
0146	Level I Sigmoidoscopy and Anoscopy	T	4.6374	$275.20	$64.40	$55.04
0147	Level II Sigmoidoscopy and Anoscopy	T	7.9679	$472.84		$94.57
0148	Level I Anal/Rectal Procedures	T	3.7383	$221.84	$57.21	$44.37
0149	Level III Anal/Rectal Procedures	T	18.0726	$1,072.48	$293.06	$214.50
0150	Level IV Anal/Rectal Procedures	T	23.8654	$1,416.24	$437.12	$283.25
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	T	18.7338	$1,111.72	$245.46	$222.34
0152	Level I Percutaneous Abdominal and Biliary Procedures	T	12.2833	$728.93		$145.79
0153	Peritoneal and Abdominal Procedures	T	21.6961	$1,287.51	$382.75	$257.50
0154	Hernia/Hydrocele Procedures	T	28.7847	$1,708.17	$464.85	$341.63
0155	Level II Anal/Rectal Procedures	T	16.2546	$964.60		$192.92
0156	Level II Urinary and Anal Procedures	T	2.5751	$152.81	$40.52	$30.56
0157	Colorectal Cancer Screening: Barium Enema	S	2.2904	$135.92		$27.18
0158	Colorectal Cancer Screening: Colonoscopy	T	7.6588	$454.50		$113.63
0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	3.1455	$186.66		$46.67
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T	6.6753	$396.13	$105.06	$79.23
0161	Level II Cystourethroscopy and other Genitourinary Procedures.	T	18.5576	$1,101.26	$249.36	$220.25
0162	Level III Cystourethroscopy and other Genitourinary Procedures.	T	23.3918	$1,388.14		$277.63
0163	Level IV Cystourethroscopy and other Genitourinary Procedures.	T	33.7354	$2,001.96		$400.39
0164	Level I Urinary and Anal Procedures	T	1.1855	$70.35	$17.29	$14.07

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0165	Level III Urinary and Anal Procedures	T	16.6689	$989.18		$197.84
0166	Level I Urethral Procedures	T	17.6743	$1,048.85	$218.73	$209.77
0168	Level II Urethral Procedures	T	28.2685	$1,677.54	$388.03	$335.51
0169	Lithotripsy	T	43.0133	$2,552.54	$1,021.01	$510.51
0170	Dialysis	S	5.8994	$350.09		$70.02
0180	Circumcision	T	19.8827	$1,179.90	$304.87	$235.98
0181	Penile Procedures	T	30.8663	$1,831.70	$621.82	$366.34
0183	Testes/Epididymis Procedures	T	23.6415	$1,402.96		$280.59
0184	Prostate Biopsy	T	4.3566	$258.53	$96.27	$51.71
0188	Level II Female Reproductive Proc	T	1.1400	$67.65		$13.53
0189	Level III Female Reproductive Proc	T	2.3710	$140.70		$28.14
0190	Level I Hysteroscopy	T	21.0653	$1,250.08	$424.28	$250.02
0191	Level I Female Reproductive Proc	T	0.1670	$9.91	$2.78	$1.98
0192	Level IV Female Reproductive Proc	T	4.3082	$255.66		$51.13
0193	Level V Female Reproductive Proc	T	14.5843	$865.48		$173.10
0194	Level VIII Female Reproductive Proc	T	20.7525	$1,231.52	$397.84	$246.30
0195	Level IX Female Reproductive Proc	T	26.6791	$1,583.22	$483.80	$316.64
0196	Dilation and Curettage	T	17.0974	$1,014.61	$338.23	$202.92
0197	Infertility Procedures	T	2.3572	$139.88		$27.98
0198	Pregnancy and Neonatal Care Procedures	T	1.3683	$81.20	$32.19	$16.24
0200	Level VII Female Reproductive Proc	T	17.8728	$1,060.63	$263.69	$212.13
0201	Level VI Female Reproductive Proc	T	17.6047	$1,044.72	$329.65	$208.94
0202	Level X Female Reproductive Proc	T	40.3866	$2,396.66	$958.66	$479.33
0203	Level IV Nerve Injections	T	10.4015	$617.26	$246.90	$123.45
0204	Level I Nerve Injections	T	2.1910	$130.02	$40.13	$26.00
0206	Level II Nerve Injections	T	5.4920	$325.91	$75.55	$65.18
0207	Level III Nerve Injections	T	6.0109	$356.70	$86.92	$71.34
0208	Laminotomies and Laminectomies	T	42.3409	$2,512.64		$502.53
0209	Extended EEG Studies and Sleep Studies, Level II	S	11.5713	$686.68	$274.67	$137.34
0212	Nervous System Injections	T	2.9740	$176.49	$70.59	$35.30
0213	Extended EEG Studies and Sleep Studies, Level I	S	2.2932	$136.09	$54.43	$27.22
0214	Electroencephalogram	S	1.1353	$67.37	$26.94	$13.47
0215	Level I Nerve and Muscle Tests	S	0.6115	$36.29	$14.51	$7.26
0216	Level III Nerve and Muscle Tests	S	2.6720	$158.56		$31.71
0218	Level II Nerve and Muscle Tests	S	1.1408	$67.70		$13.54
0220	Level I Nerve Procedures	T	17.3586	$1,030.11		$206.02
0221	Level II Nerve Procedures	T	29.9209	$1,775.60	$463.62	$355.12
0222	Implantation of Neurological Device	T	179.0982	$10,628.22		$2,125.64
0223	Implantation or Revision of Pain Management Catheter	T	28.1230	$1,668.90		$333.78
0224	Implantation of Reservoir/Pump/Shunt	T	40.6455	$2,412.03		$482.41
0225	Level II Implantation of Neurostimulator Electrodes	S	234.6925	$13,927.36		$2,785.47
0226	Implantation of Drug Infusion Reservoir	T	138.8695	$8,240.93		$1,648.19
0227	Implantation of Drug Infusion Device	T	136.4922	$8,099.86		$1,619.97
0228	Creation of Lumbar Subarachnoid Shunt	T	51.7258	$3,069.56		$613.91
0229	Transcatherter Placement of Intravascular Shunts	T	64.4545	$3,824.92	$771.23	$764.98
0230	Level I Eye Tests & Treatments	S	0.7858	$46.63	$14.97	$9.33
0231	Level III Eye Tests & Treatments	S	1.9278	$114.40	$44.61	$22.88
0232	Level I Anterior Segment Eye Procedures	T	6.6732	$396.01	$103.17	$79.20
0233	Level II Anterior Segment Eye Procedures	T	14.9673	$888.20	$266.33	$177.64
0234	Level III Anterior Segment Eye Procedures	T	21.9741	$1,304.01	$511.31	$260.80
0235	Level I Posterior Segment Eye Procedures	T	4.6593	$276.50	$67.40	$55.30
0236	Level II Posterior Segment Eye Procedures	T	17.0229	$1,010.19		$202.04
0237	Level III Posterior Segment Eye Procedures	T	28.9401	$1,717.39		$343.48
0238	Level I Repair and Plastic Eye Procedures	T	2.5933	$153.89		$30.78
0239	Level II Repair and Plastic Eye Procedures	T	6.9097	$410.04		$82.01
0240	Level III Repair and Plastic Eye Procedures	T	18.1508	$1,077.12	$315.31	$215.42
0241	Level IV Repair and Plastic Eye Procedures	T	23.3036	$1,382.91	$384.47	$276.58
0242	Level V Repair and Plastic Eye Procedures	T	30.5464	$1,812.72	$597.36	$362.54
0243	Strabismus/Muscle Procedures	T	22.1671	$1,315.46	$431.39	$263.09
0244	Corneal Transplant	T	38.3723	$2,277.13	$803.26	$455.43
0245	Level I Cataract Procedures without IOL Insert	T	13.3625	$792.97	$221.89	$158.59
0246	Cataract Procedures with IOL Insert	T	23.4597	$1,392.17	$495.96	$278.43
0247	Laser Eye Procedures Except Retinal	T	5.0330	$298.67	$104.31	$59.73
0248	Laser Retinal Procedures	T	4.6769	$277.54	$93.98	$55.51
0249	Level II Cataract Procedures without IOL Insert	T	27.9369	$1,657.86	$524.67	$331.57
0250	Nasal Cauterization/Packing	T	1.2896	$76.53	$26.79	$15.31
0251	Level I ENT Procedures	T	2.0101	$119.29		$23.86
0252	Level II ENT Procedures	T	7.8673	$466.87	$113.41	$93.37
0253	Level III ENT Procedures	T	16.1357	$957.54	$282.29	$191.51

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0254	Level IV ENT Procedures	T	23.4040	$1,388.86	$321.35	$277.77
0256	Level V ENT Procedures	T	37.3204	$2,214.70		$442.94
0258	Tonsil and Adenoid Procedures	T	22.2466	$1,320.18	$437.25	$264.04
0259	Level VI ENT Procedures	T	366.3317	$21,739.22	$8,070.21	$4,347.84
0260	Level I Plain Film Except Teeth	X	0.7555	$44.83	$17.93	$8.97
0261	Level II Plain Film Except Teeth Including Bone Density Measurement.	X	1.2901	$76.56		$15.31
0262	Plain Film of Teeth	X	0.9228	$54.76		$10.95
0263	Level I Miscellaneous Radiology Procedures	X	1.7476	$103.71	$24.40	$20.74
0264	Level II Miscellaneous Radiology Procedures	X	3.5240	$209.12	$79.41	$41.82
0265	Level I Diagnostic Ultrasound	S	1.0213	$60.61	$24.24	$12.12
0266	Level II Diagnostic Ultrasound	S	1.6393	$97.28	$38.91	$19.46
0267	Level III Diagnostic Ultrasound	S	2.6327	$156.23	$62.18	$31.25
0268	Ultrasound Guidance Procedures	S	1.0610	$62.96		$12.59
0269	Level III Echocardiogram Except Transesophageal	S	3.2437	$192.49	$76.99	$38.50
0270	Transesophageal Echocardiogram	S	6.0192	$357.20	$142.88	$71.44
0272	Level I Fluoroscopy	X	1.3801	$81.90	$32.76	$16.38
0274	Myelography	S	3.0413	$180.48	$72.19	$36.10
0275	Arthrography	S	3.5779	$212.32	$69.09	$42.46
0276	Level I Digestive Radiology	S	1.5319	$90.91	$36.36	$18.18
0277	Level II Digestive Radiology	S	2.3852	$141.54	$56.61	$28.31
0278	Diagnostic Urography	S	2.6434	$156.87	$62.74	$31.37
0279	Level II Angiography and Venography except Extremity	S	8.9319	$530.05	$150.03	$106.01
0280	Level III Angiography and Venography except Extremity	S	20.7902	$1,233.75	$353.85	$246.75
0282	Miscellaneous Computerized Axial Tomography	S	1.6542	$98.17	$39.26	$19.63
0283	Computerized Axial Tomography with Contrast Material	S	4.4253	$262.61	$105.04	$52.52
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contras.	S	6.4201	$380.99	$152.39	$76.20
0285	Myocardial Positron Emission Tomography (PET)	S	17.1798	$1,019.50	$318.72	$203.90
0288	Bone Density: Axial Skeleton	S	1.2568	$74.58		$14.92
0296	Level I Therapeutic Radiologic Procedures	S	2.2452	$133.24	$53.29	$26.65
0297	Level II Therapeutic Radiologic Procedures	S	5.2530	$311.73	$122.13	$62.35
0299	Miscellaneous Radiation Treatment	S	5.8482	$347.05		$69.41
0300	Level I Radiation Therapy	S	1.5198	$90.19		$18.04
0301	Level II Radiation Therapy	S	2.2195	$131.71		$26.34
0302	Level III Radiation Therapy	S	4.6145	$273.84	$103.74	$54.77
0303	Treatment Device Construction	X	2.8356	$168.27	$66.95	$33.65
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.7738	$105.26	$41.52	$21.05
0305	Level II Therapeutic Radiation Treatment Preparation	X	4.0036	$237.59	$91.38	$47.52
0310	Level III Therapeutic Radiation Treatment Preparation	X	13.9490	$827.78	$325.27	$165.56
0312	Radioelement Applications	S	5.0032	$296.90		$59.38
0313	Brachytherapy	S	12.8655	$763.48		$152.70
0314	Hyperthermic Therapies	S	5.9945	$355.73	$98.36	$71.15
0315	Level II Implantation of Neurostimulator	T	290.6470	$17,247.86		$3,449.57
0320	Electroconvulsive Therapy	S	5.3765	$319.06	$80.06	$63.81
0321	Biofeedback and Other Training	S	1.3579	$80.58	$21.71	$16.12
0322	Brief Individual Psychotherapy	S	1.2319	$73.10		$14.62
0323	Extended Individual Psychotherapy	S	1.6227	$96.30	$20.08	$19.26
0324	Family Psychotherapy	S	2.0997	$124.60		$24.92
0325	Group Psychotherapy	S	1.3189	$78.27	$17.10	$15.65
0330	Dental Procedures	S	7.1756	$425.82		$85.16
0332	Computerized Axial Tomography and Computerized Angiography without Contras.	S	3.2694	$194.02	$77.60	$38.80
0333	Computerized Axial Tomography and Computerized Angio w/o Contrast Material.	S	5.2836	$313.54	$125.41	$62.71
0335	Magnetic Resonance Imaging, Miscellaneous	S	5.1581	$306.10	$122.43	$61.22
0336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Cont.	S	6.0742	$360.46	$144.18	$72.09
0337	MRI and Magnetic Resonance Angiography without Contrast Material followed.	S	8.7945	$521.89	$208.75	$104.38
0339	Observation	S	7.1403	$423.73		$84.75
0340	Minor Ancillary Procedures	X	0.6384	$37.88		$7.58
0341	Skin Tests	X	0.1112	$6.60	$2.62	$1.32
0342	Level I Pathology	X	0.1560	$9.26	$3.70	$1.85
0343	Level III Pathology	X	0.4786	$28.40	$11.10	$5.68
0344	Level IV Pathology	X	0.7996	$47.45	$15.66	$9.49
0345	Level I Transfusion Laboratory Procedures	X	0.2277	$13.51	$3.01	$2.70
0346	Level II Transfusion Laboratory Procedures	X	0.3434	$20.38	$4.54	$4.08
0347	Level III Transfusion Laboratory Procedures	X	0.8434	$50.05	$12.35	$10.01

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0348	Fertility Laboratory Procedures	X	0.7927	$47.04		$9.41
0350	Administration of flu and PPV vaccines	X	0.3954	$23.46	$0.00	$0.00
0352	Level I Injections	X	0.1413	$8.39		$1.68
0353	Level II Injections	X	0.3954	$23.46		$4.69
0359	Level III Injections	X	0.8312	$49.33		$9.87
0360	Level I Alimentary Tests	X	1.4739	$87.47	$34.98	$17.49
0361	Level II Alimentary Tests	X	3.6216	$214.92	$83.23	$42.98
0362	Contact Lens and Spectacle Services	X	2.6607	$157.89		$31.58
0363	Level I Otorhinolaryngologic Function Tests	X	0.9128	$54.17	$17.44	$10.83
0364	Level I Audiometry	X	0.4708	$27.94	$9.06	$5.59
0365	Level II Audiometry	X	1.2356	$73.32	$18.95	$14.66
0366	Level III Audiometry	X	1.7743	$105.29	$30.04	$21.06
0367	Level I Pulmonary Test	X	0.6659	$39.52	$14.80	$7.90
0368	Level II Pulmonary Tests	X	0.9761	$57.92	$23.16	$11.58
0369	Level III Pulmonary Tests	X	2.7519	$163.31	$44.18	$32.66
0370	Allergy Tests	X	1.1232	$66.65		$13.33
0372	Therapeutic Phlebotomy	X	0.5700	$33.83	$10.09	$6.77
0373	Neuropsychological Testing	X	2.1926	$130.12		$26.02
0374	Monitoring Psychiatric Drugs	X	1.0414	$61.80		$12.36
0375	Ancillary Outpatient Services When Patient Expires	T	42.5900	$2,527.42		$505.48
0376	Level II Cardiac Imaging	S	5.1975	$308.44	$121.42	$61.69
0377	Level III Cardiac Imaging	S	6.8344	$405.57	$162.22	$81.11
0378	Level II Pulmonary Imaging	S	5.4997	$326.37	$130.54	$65.27
0379	Injection adenosine	K		$33.45		$6.69
0381	Single Allergy Tests	X	0.1884	$11.18	$2.35	$2.24
0384	GI Procedures with Stents	T	22.3392	$1,325.68	$287.93	$265.14
0385	Level I Prosthetic Urological Procedures	S	75.6446	$4,488.98		$897.80
0386	Level II Prosthetic Urological Procedures	S	120.1694	$7,131.21		$1,426.24
0387	Level II Hysteroscopy	T	32.5445	$1,931.29	$655.55	$386.26
0388	Discography	S	12.3294	$731.66	$292.66	$146.33
0389	Non-imaging Nuclear Medicine	S	1.4976	$88.87	$35.54	$17.77
0390	Level I Endocrine Imaging	S	2.5562	$151.69	$60.67	$30.34
0391	Level II Endocrine Imaging	S	2.8774	$170.75	$68.30	$34.15
0393	Red Cell/Plasma Studies	S	3.4438	$204.37	$81.74	$40.87
0394	Hepatobiliary Imaging	S	4.4630	$264.85	$105.93	$52.97
0395	GI Tract Imaging	S	3.8699	$229.65	$91.86	$45.93
0396	Bone Imaging	S	4.1426	$245.83	$98.33	$49.17
0397	Vascular Imaging	S	2.2646	$134.39	$53.75	$26.88
0398	Level I Cardiac Imaging	S	4.3093	$255.73	$102.29	$51.15
0399	Nuclear Medicine Add-on Imaging	S	1.5192	$90.15	$36.06	$18.03
0400	Hematopoietic Imaging	S	4.1335	$245.29	$98.11	$49.06
0401	Level I Pulmonary Imaging	S	3.4150	$202.66	$81.06	$40.53
0402	Brain Imaging	S	5.1847	$307.68	$123.07	$61.54
0403	CSF Imaging	S	3.6138	$214.45	$85.78	$42.89
0404	Renal and Genitourinary Studies Level I	S	3.8559	$228.82	$91.52	$45.76
0405	Renal and Genitourinary Studies Level II	S	4.2674	$253.24	$101.29	$50.65
0406	Tumor/Infection Imaging	S	4.3035	$255.38	$102.15	$51.08
0407	Radionuclide Therapy	S	3.9839	$236.42	$94.56	$47.28
0409	Red Blood Cell Tests	X	0.1258	$7.47	$2.22	$1.49
0411	Respiratory Procedures	S	0.3869	$22.96		$4.59
0412	IMRT Treatment Delivery	S	5.3643	$318.33		$63.67
0415	Level II Endoscopy Lower Airway	T	22.0955	$1,311.21	$459.92	$262.24
0416	Level I Intravascular and Intracardiac Ultrasound and Flow Reserve.	S	19.5542	$1,160.40		$232.08
0417	Computerized Reconstruction	S	4.0750	$241.82		$48.36
0418	Insertion of Left Ventricular Pacing Elect	T	109.3043	$6,486.45		$1,297.29
0421	Prolonged Physiologic Monitoring	X	1.6600	$98.51		$19.70
0422	Level II Upper GI Procedures	T	22.9647	$1,362.79	$448.81	$272.56
0423	Level II Percutaneous Abdominal and Biliary Procedures	T	40.2866	$2,390.73		$478.15
0425	Level II Arthroplasty with Prosthesis	T	100.2058	$5,946.51	$1,378.01	$1,189.30
0426	Level II Strapping and Cast Application	S	2.1243	$126.06		$25.21
0427	Level III Tube Changes and Repositioning	T	10.1977	$605.16	$124.11	$121.03
0428	Level III Sigmoidoscopy and Anoscopy	T	19.9022	$1,181.06		$236.21
0429	Level V Cystourethroscopy and other Genitourinary Procedures.	T	42.3147	$2,511.08		$502.22
0430	Level IV Nerve and Muscle Tests	T	11.4040	$676.75		$135.35
0432	Health and Behavior Services	S	0.6949	$41.24		$8.25
0433	Level II Pathology	X	0.2581	$15.32	$6.12	$3.06
0434	Cardiac Defect Repair	T	90.7877	$5,387.61		$1,077.52

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0600	Low Level Clinic Visits	V	0.8688	$51.56		$10.31
0601	Mid Level Clinic Visits	V	1.0038	$59.57		$11.91
0602	High Level Clinic Visits	V	1.4284	$84.77		$16.95
0610	Low Level Emergency Visits	V	1.2947	$76.83	$19.48	$15.37
0611	Mid Level Emergency Visits	V	2.2718	$134.82	$35.76	$26.96
0612	High Level Emergency Visits	V	3.9853	$236.50	$54.12	$47.30
0620	Critical Care	S	8.2996	$492.52	$135.68	$98.50
0621	Level I Vascular Access Procedures	T	8.2986	$492.46		$98.49
0622	Level II Vascular Access Procedures	T	21.2671	$1,262.05		$252.41
0623	Level III Vascular Access Procedures	T	27.1105	$1,608.82		$321.76
0648	Breast Reconstruction with Prosthesis	T	50.4459	$2,993.61		$598.72
0651	Complex Interstitial Radiation Source Application	S	12.1448	$720.71		$144.14
0652	Insertion of Intraperitoneal Catheters	T	28.8948	$1,714.70		$342.94
0653	Vascular Reconstruction/Fistula Repair with Device	T	30.5339	$1,811.97		$362.39
0654	Insertion/Replacement of a permanent dual chamber pacemaker.	T	100.9294	$5,989.45		$1,197.89
0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	T	133.7768	$7,938.72		$1,587.74
0656	Transcatheter Placement of Intracoronary Drug-Eluting Stents	T	109.9237	$6,523.20		$1,304.64
0657	Placement of Tissue Clips	S	1.7092	$101.43		$20.29
0658	Percutaneous Breast Biopsies	T	6.1049	$362.28		$72.46
0659	Hyperbaric Oxygen	S	1.5473	$91.82		$18.36
0660	Level II Otorhinolaryngologic Function Tests	X	1.6419	$97.44	$30.66	$19.49
0661	Level V Pathology	X	3.3775	$200.43	$80.17	$40.09
0662	CT Angiography	S	5.1621	$306.33	$122.53	$61.27
0664	Level I Proton Beam Radiation Therapy	S	12.9439	$768.13		$153.63
0665	Bone Density: AppendicularSkeleton	S	0.6464	$38.36		$7.67
0667	Level II Proton Beam Radiation Therapy	S	15.4857	$918.97		$183.79
0668	Level I Angiography and Venography except Extremity	S	6.5024	$385.87	$114.67	$77.17
0670	Level II Intravascular and Intracardiac Ultrasound and Flow Reserve.	S	25.4131	$1,508.09	$472.46	$301.62
0671	Level II Echocardiogram Except Transesophageal	S	1.7028	$101.05	$40.42	$20.21
0672	Level IV Posterior Segment Eye Procedures	T	36.9284	$2,191.44		$438.29
0673	Level IV Anterior Segment Eye Procedures	T	29.2582	$1,736.27	$649.56	$347.25
0674	Prostate Cryoablation	T	95.7856	$5,684.20		$1,136.84
0675	Prostatic Thermotherapy	T	43.7329	$2,595.24		$519.05
0676	Thrombolysis and Thrombectomy	T	2.4105	$143.05		$28.61
0678	External Counterpulsation	T	1.7276	$102.52		$20.50
0679	Level II Resuscitation and Cardioversion	S	5.5774	$330.98	$95.30	$66.20
0680	Insertion of Patient Activated Event Recorders	S	62.9082	$3,733.16		$746.63
0681	Knee Arthroplasty	T	137.1630	$8,139.66	$2,081.48	$1,627.93
0682	Level V Debridement & Destruction	T	6.9107	$410.10	$162.42	$82.02
0683	Level II Photochemotherapy	S	1.9006	$112.79	$25.34	$22.56
0685	Level III Needle Biopsy/Aspiration Except Bone Marrow	T	6.0174	$357.09	$115.47	$71.42
0686	Level III Skin Repair	T	13.8287	$820.64		$164.13
0687	Revision/Removal of Neurostimulator Electrodes	T	19.2347	$1,141.44	$456.57	$228.29
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver.	T	43.0444	$2,554.38	$1,021.75	$510.88
0689	Electronic Analysis of Cardioverter-defibrillators	S	0.5735	$34.03		$6.81
0690	Electronic Analysis of Pacemakers and other Cardiac Devices	S	0.3755	$22.28	$8.91	$4.46
0691	Electronic Analysis of Programmable Shunts/Pumps	S	2.5252	$149.85	$59.94	$29.97
0692	Electronic Analysis of Neurostimulator Pulse Generators	S	2.0111	$119.34	$30.16	$23.87
0693	Level II Breast Reconstruction	T	42.2254	$2,505.78	$798.17	$501.16
0694	Mohs Surgery	T	3.8452	$228.19	$61.86	$45.64
0695	Level VII Debridement & Destruction	T	20.3164	$1,205.64	$266.59	$241.13
0697	Level I Echocardiogram Except Transesophageal	S	1.5357	$91.13	$36.45	$18.23
0698	Level II Eye Tests & Treatments	S	1.2438	$73.81	$16.55	$14.76
0699	Level IV Eye Tests & Treatments	T	10.0177	$594.48		$118.90
0700	Antepartum Manipulation	T	5.3614	$318.16		$63.63
0701	SR 89 chloride, per mCi	H				
0702	SM 153 lexidronam	H				
0704	IN 111 Satumomab pendetide per dose	H				
0705	Technetium TC99M tetrofosmin	H				
0726	Dexrazoxane hcl injection	K		$216.39		$43.28
0728	Filgrastim injection	K		$178.39		$35.68
0730	Pamidronate disodium	K		$58.42		$11.68
0731	Sargramostim injection	K		$21.11		$4.22
0732	Mesna injection	K		$13.68		$2.74
0733	Non esrd epoetin alpha inj	K		$9.99		$2.00

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0734	Injection, darbepoetin alfa (for non-ESRD)	K		$3.28		$0.66
0735	Ampho b cholesteryl sulfate	K		$12.24		$2.45
0736	Amphotericin b liposome inj	K		$21.91		$4.38
0737	Ammonia N-13, per dose	H				
0738	Rasburicase	G		$109.18		$21.84
0750	Dolasetron mesylate	K		$6.55		$1.31
0763	Dolasetron mesylate oral	K		$48.54		$9.71
0764	Granisetron HCl injection	K		$7.24		$1.45
0765	Granisetron HCl oral	K		$33.51		$6.70
0768	Ondansetron hcl injection	K		$3.80		$0.76
0769	Ondansetron hcl oral	K		$32.02		$6.40
0800	Leuprolide acetate	K		$441.78		$88.36
0802	Etoposide oral	K		$41.12		$8.22
0807	Aldesleukin/single use vial	K		$701.76		$140.35
0809	Bcg live intravesical vac	K		$121.74		$24.35
0810	Goserelin acetate implant	K		$196.25		$39.25
0811	Carboplatin injection	K		$77.16		$15.43
0812	Carmus bischl nitro inj	K		$141.29		$28.26
0814	Asparaginase injection	K		$55.42		$11.08
0819	Dacarbazine inj	K		$6.20		$1.24
0820	Daunorubicin	K		$35.28		$7.06
0821	Daunorubicin citrate liposom	K		$57.56		$11.51
0823	Docetaxel	K		$301.17		$60.23
0827	Floxuridine injection	K		$60.17		$12.03
0828	Gemcitabine HCL	K		$117.45		$23.49
0830	Irinotecan injection	K		$129.08		$25.82
0831	Ifosfomide injection	K		$53.54		$10.71
0832	Idarubicin hcl injection	K		$314.00		$62.80
0834	Interferon alfa-2a inj	K		$31.75		$6.35
0835	Inj cosyntropin	K		$69.27		$13.85
0836	Interferon alfa-2b inj recombinant, 1 million	K		$13.22		$2.64
0838	Interferon gamma 1-b inj	K		$277.79		$55.56
0840	Melphalan hydrochl	K		$523.22		$104.64
0842	Fludarabine phosphate inj	K		$262.41		$52.48
0843	Pegaspargase	K		$1,528.80		$305.76
0844	Pentostatin injection	K		$1,868.91		$373.78
0849	Rituximab	K		$447.97		$89.59
0850	Streptozocin injection	K		$153.33		$30.67
0851	Thiotepa injection	K		$44.55		$8.91
0852	Topotecan	K		$755.51		$151.10
0855	Vinorelbine tartrate	K		$62.85		$12.57
0856	Porfimer sodium	K		$2,457.97		$491.59
0857	Bleomycin sulfate injection	K		$54.18		$10.84
0858	Cladribine	K		$39.37		$7.87
0860	Plicamycin (mithramycin) inj	K		$80.54		$16.11
0861	Leuprolide acetate injection	K		$10.96		$2.19
0862	Mitomycin	K		$26.36		$5.27
0863	Paclitaxel injection	K		$19.11		$3.82
0864	Mitoxantrone hcl	K		$329.69		$65.94
0865	Interferon alfa-n3 inj, human leukocyte derived, 2	K		$8.77		$1.75
0868	Oral aprepitant	G		$4.75		$0.95
0869	IVIG lyophil 1g	K		$39.46		$7.89
0870	IVIG lyophil 10 mg	K		$0.40		$0.08
0871	IVIG non-lyophil 1g	K		$57.26		$11.45
0872	IVIG non-lyophil 10 mg	K		$0.57		$0.11
0876	Caffeine citrate injection	K		$3.34		$0.67
0880	Penicillin g benzathine inj	K		$72.26		$14.45
0884	Rho d immune globulin inj	K		$113.91		$22.78
0887	Azathioprine parenteral	K		$47.40		$9.48
0888	Cyclosporine oral	K		$3.94		$0.79
0890	Lymphocyte immune globulin	K		$290.30		$58.06
0891	Tacrolimus oral	K		$3.37		$0.67
0892	Edetate calcium disodium inj	K		$40.34		$8.07
0893	Calcitonin salmon injection	K		$35.68		$7.14
0895	Deferoxamine mesylate inj	K		$14.91		$2.98
0900	Alglucerase injection	K		$39.94		$7.99
0901	Alpha 1 proteinase inhibitor	K		$3.30		$0.66
0902	Botulinum toxin a, per unit	K		$4.80		$0.96
0903	Cytomegalovirus imm IV/vial	K		$683.07		$136.61

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0906	RSV-ivig	K		$15.56		$3.11
0910	Interferon beta-1b	K		$81.95		$16.39
0911	Streptokinase	K		$83.36		$16.67
0912	Interferon alfacon-1	K		$3.91		$0.78
0913	Ganciclovir long act implant	K		$4,318.68		$863.74
0916	Injection imiglucerase /unit	K		$3.98		$0.80
0917	Adenosine injection	K		$71.53		$14.31
0925	Factor viii	K		$0.51		$0.10
0926	Factor VIII (porcine)	K		$1.75		$0.35
0927	Factor viii recombinant	K		$0.94		$0.19
0928	Factor ix complex	K		$0.52		$0.10
0929	Anti-inhibitor per iu	K		$1.12		$0.22
0931	Factor IX non-recombinant	K		$0.75		$0.15
0932	Factor IX recombinant	K		$0.86		$0.17
0935	Clonidine hydrochloride	K		$57.47		$11.49
0949	Plasma, Pooled Multiple Donor, Solvent/Detergent T	K	1.1956	$70.95		$14.19
0950	Blood (Whole) For Transfusion	K	2.0123	$119.42		$23.88
0952	Cryoprecipitate	K	0.7395	$43.88		$8.78
0954	RBC leukocytes reduced	K	2.7370	$162.42		$32.48
0955	Plasma, Fresh Frozen	K	1.2934	$76.75		$15.35
0956	Plasma Protein Fraction	K	1.1226	$66.62		$13.32
0957	Platelet Concentrate	K	0.8317	$49.36		$9.87
0958	Platelet Rich Plasma	K	5.1815	$307.49		$61.50
0959	Red Blood Cells	K	2.0301	$120.47		$24.09
0960	Washed Red Blood Cells	K	2.9707	$176.29		$35.26
0961	Infusion, Albumin (Human) 5%, 50 ml	K	0.5119	$30.38		$6.08
0963	Albumin (human), 5%	K	1.3869	$82.30		$16.46
0964	Albumin (human), 25%	K	0.4878	$28.95		$5.79
0965	Albumin (human), 25%	K	1.1117	$65.97		$13.19
0966	Plasmaprotein fract, 5%	K	4.9564	$294.13		$58.83
0967	Split unit of blood	K	1.2698	$75.35		$15.07
0968	Platelets leukocyte reduced irradiated	K	2.3639	$140.28		$28.06
0969	Red blood cell leukocyte reduced irradiated	K	3.6451	$216.31		$43.26
1009	Cryoprecip reduced plasma	K	1.3062	$77.51		$15.50
1010	Blood, L/R, CMV-neg	K	2.9692	$176.20		$35.24
1011	Platelets, HLA-m, L/R, unit	K	10.9690	$650.93		$130.19
1013	Platelet concentrate, L/R, unit	K	1.6023	$95.09		$19.02
1016	Blood, L/R, froz/deglycerol/washed	K	5.2631	$312.33		$62.47
1017	Platelets, aph/pher, L/R, CMV-neg, unit	K	8.5998	$510.34		$102.07
1018	Blood, L/R, irradiated	K	2.8004	$166.18		$33.24
1019	Platelets, aph/pher, L/R, irradiated, unit	K	9.5131	$564.54		$112.91
1020	Pit, pher, L/R, CMV, irrad	K	10.1551	$602.63		$120.53
1021	RBC, frz/deg/wsh, L/R, irrad	K	4.8787	$289.52		$57.90
1022	RBC, L/R, CMV neg, irrad	K	4.2901	$254.59		$50.92
1045	Iobenguane sulfate I-131	H				
1052	Injection, Voriconazole	K		$4.63		$0.93
1064	I–131 sodium iodide capsule	H				
1065	I–131 sodium iodide solution	H				
1080	I–131 tositumomab, dx	H				
1081	I–131 tositumomab, tx	H				
1082	Treprostinil	K		$55.02		$11.00
1083	Injection, Adalimumab	K		$300.10		$60.02
1084	Denileukin diftitox	K		$1,235.33		$247.07
1085	Injection, Gallium Nitrate	K		$1.30		$0.26
1086	Temozolomide,oral	K		$7.28		$1.46
1088	Dx I131 so iodide cap millic	H				
1091	IN 111 Oxyquinoline	H				
1092	IN 111 Pentetate	H				
1093	TC99M fanolesomab	H				
1096	TC 99M Exametazime, per dose	H				
1150	Th I131 so iodide sol millic	H				
1166	Cytarabine liposome	K		$366.43		$73.29
1167	Epirubicin hcl	K		$25.15		$5.03
1178	Busulfan IV	K	0.2851	$16.92		$3.38
1201	TC 99M SUCCIMER, PER Vial	H				
1203	Verteporfin for injection	K		$9.16		$1.83
1207	Octreotide injection, depot	K		$87.40		$17.48
1210	Inj dihydroergotamine mesylt	K		$27.82		$5.56
1280	Corticotropin injection	K		$95.44		$19.09

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1305	Apligraf	K	12.9222	$766.84		$153.37
1330	Ergonovine maleate injection	K	0.5263	$31.23		$6.25
1409	Factor viia recombinant	K		$1,080.11		$216.02
1436	Etidronate disodium inj	K		$68.69		$13.74
1491	New Technology—Level I ($0–$10)	S		$5.00		$1.00
1492	New Technology—Level I ($10–$20)	S		$15.00		$3.00
1493	New Technology—Level I ($20–$30)	S		$25.00		$5.00
1494	New Technology—Level I ($30–$40)	S		$35.00		$7.00
1495	New Technology—Level I ($40–$50)	S		$45.00		$9.00
1496	New Technology—Level I ($0–$10)	T		$5.00		$1.00
1497	New Technology—Level I ($10–$20)	T		$15.00		$3.00
1498	New Technology—Level I ($20–$30)	T		$25.00		$5.00
1499	New Technology—Level I ($30–$40)	T		$35.00		$7.00
1500	New Technology—Level I ($40–$50)	T		$45.00		$9.00
1502	New Technology—Level II ($50–$100)	S		$75.00		$15.00
1503	New Technology—Level III ($100–$200)	S		$150.00		$30.00
1504	New Technology—Level IV ($200–$300)	S		$250.00		$50.00
1505	New Technology—Level V ($300–$400)	S		$350.00		$70.00
1506	New Technology—Level VI ($400–$500)	S		$450.00		$90.00
1507	New Technology—Level VII ($500–$600)	S		$550.00		$110.00
1508	New Technology—Level VIII ($600–$700)	S		$650.00		$130.00
1509	New Technology—Level IX ($700–$800)	S		$750.00		$150.00
1510	New Technology—Level X ($800–$900)	S		$850.00		$170.00
1511	New Technology—Level XI ($900–$1000)	S		$950.00		$190.00
1512	New Technology—Level XII ($1000–$1100)	S		$1,050.00		$210.00
1513	New Technology—Level XIII ($1100–$1200)	S		$1,150.00		$230.00
1514	New Technology—Level XIV ($1200–$1300)	S		$1,250.00		$250.00
1515	New Technology—Level XV ($1300–$1400)	S		$1,350.00		$270.00
1516	New Technology—Level XVI ($1400–$1500)	S		$1,450.00		$290.00
1517	New Technology—Level XVII ($1500–$1600)	S		$1,550.00		$310.00
1518	New Technology—Level XVIII ($1600–$1700)	S		$1,650.00		$330.00
1519	New Technology—Level IXX ($1700–$1800)	S		$1,750.00		$350.00
1520	New Technology—Level XX ($1800–$1900)	S		$1,850.00		$370.00
1521	New Technology—Level XXI ($1900–$2000)	S		$1,950.00		$390.00
1522	New Technology—Level XXII ($2000–$2500)	S		$2,250.00		$450.00
1523	New Technology—Level XXIII ($2500–$3000)	S		$2,750.00		$550.00
1524	New Technology—Level XIV ($3000–$3500)	S		$3,250.00		$650.00
1525	New Technology—Level XXV ($3500–$4000)	S		$3,750.00		$750.00
1526	New Technology—Level XXVI ($4000–$4500)	S		$4,250.00		$850.00
1527	New Technology—Level XXVII ($4500–$5000)	S		$4,750.00		$950.00
1528	New Technology—Level XXVIII ($5000–$5500)	S		$5,250.00		$1,050.00
1529	New Technology—Level XXIX ($5500–$6000)	S		$5,750.00		$1,150.00
1530	New Technology—Level XXX ($6000–$6500)	S		$6,250.00		$1,250.00
1531	New Technology—Level XXXI ($6500–$7000)	S		$6,750.00		$1,350.00
1532	New Technology—Level XXXII ($7000–$7500)	S		$7,250.00		$1,450.00
1533	New Technology—Level XXXIII ($7500–$8000)	S		$7,750.00		$1,550.00
1534	New Technology—Level XXXIV ($8000–$8500)	S		$8,250.00		$1,650.00
1535	New Technology—Level XXXV ($8500–$9000)	S		$8,750.00		$1,750.00
1536	New Technology—Level XXXVI ($9000–$9500)	S		$9,250.00		$1,850.00
1537	New Technology—Level XXXVII ($9500–$10000)	S		$9,750.00		$1,950.00
1539	New Technology—Level II ($50–$100)	T		$75.00		$15.00
1540	New Technology—Level III ($100–$200)	T		$150.00		$30.00
1541	New Technology—Level IV ($200–$300)	T		$250.00		$50.00
1542	New Technology—Level V ($300–$400)	T		$350.00		$70.00
1543	New Technology—Level VI ($400–$500)	T		$450.00		$90.00
1544	New Technology—Level VII ($500–$600)	T		$550.00		$110.00
1545	New Technology—Level VIII ($600–$700)	T		$650.00		$130.00
1546	New Technology—Level IX ($700–$800)	T		$750.00		$150.00
1547	New Technology—Level X ($800–$900)	T		$850.00		$170.00
1548	New Technology—Level XI ($900–$1000)	T		$950.00		$190.00
1549	New Technology—Level XII ($1000–$1100)	T		$1,050.00		$210.00
1550	New Technology—Level XIII ($1100–$1200)	T		$1,150.00		$230.00
1551	New Technology—Level XIV ($1200- $1300)	T		$1,250.00		$250.00
1552	New Technology—Level XV ($1300–$1400)	T		$1,350.00		$270.00
1553	New Technology—Level XVI ($1400–$1500)	T		$1,450.00		$290.00
1554	New Technology—Level XVII ($1500-$1600)	T		$1,550.00		$310.00
1555	New Technology—Level XVIII ($1600-$1700)	T		$1,650.00		$330.00
1556	New Technology—Level XIX ($1700-$1800)	T		$1,750.00		$350.00
1557	New Technology—Level XX ($1800-$1900)	T		$1,850.00		$370.00

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1558	New Technology—Level XXI ($1900-$2000)	T		$1,950.00		$390.00
1559	New Technology—Level XXII ($2000-$2500)	T		$2,250.00		$450.00
1560	New Technology—Level XXIII ($2500-$3000)	T		$2,750.00		$550.00
1561	New Technology—Level XXIV ($3000-$3500)	T		$3,250.00		$650.00
1562	New Technology—Level XXV ($3500-$4000)	T		$3,750.00		$750.00
1563	New Technology—Level XXVI ($4000-$4500)	T		$4,250.00		$850.00
1564	New Technology—Level XXVII ($4500-$5000)	T		$4,750.00		$950.00
1565	New Technology—Level XXVIII ($5000-$5500)	T		$5,250.00		$1,050.00
1566	New Technology—Level XXIX ($5500-$6000)	T		$5,750.00		$1,150.00
1567	New Technology—Level XXX ($6000-$6500)	T		$6,250.00		$1,250.00
1568	New Technology—Level XXXI ($6500-$7000)	T		$6,750.00		$1,350.00
1569	New Technology—Level XXXII ($7000-$7500)	T		$7,250.00		$1,450.00
1570	New Technology—Level XXXIII ($7500-$8000)	T		$7,750.00		$1,550.00
1571	New Technology—Level XXXIV ($8000-$8500)	T		$8,250.00		$1,650.00
1572	New Technology—Level XXXV ($8500-$9000)	T		$8,750.00		$1,750.00
1573	New Technology—Level XXXVI ($9000-$9500)	T		$9,250.00		$1,850.00
1574	New Technology—Level XXXVII ($9500-$10000)	T		$9,750.00		$1,950.00
1600	Technetium TC 99m sestamibi	H				
1603	Thallous chloride TL 201	H				
1604	IN 111 capromab pendetide, per dose	H				
1605	Abciximab injection	K		$450.60		$90.12
1607	Eptifibatide injection	K		$12.73		$2.55
1608	Etanercept injection	K		$152.11		$30.42
1609	Rho(D) immune globulin h, sd	K		$12.04		$2.41
1611	Hylan G–F 20 injection	K		$203.15		$40.63
1612	Daclizumab, parenteral	K		$381.48		$76.30
1613	Trastuzumab	K		$53.98		$10.80
1615	Basiliximab	K		$1,473.57		$294.71
1618	Vonwillebrandfactrcmplx, per iu	K		$0.74		$0.15
1619	Gallium ga 67	H				
1620	Technetium tc99m bicisate	H				
1622	Technetium tc99m mertiatide	H				
1624	Sodium phosphate p32	H				
1625	Indium 111-in pentetreotide	H				
1628	Chromic phosphate p32	H				
1655	Tinzaparin sodium injection	K		$2.53		$0.51
1670	Tetanus immune globulin inj	K		$76.90		$15.38
1716	Brachytx source, Gold 198	H				
1717	Brachytx source, HDR Ir–192	H				
1718	Brachytx source, Iodine 125	H				
1719	Brachytx sour, Non-HDR Ir–192	H				
1720	Brachytx sour, Palladium 103	H				
1740	Diazoxide injection	K		$113.86		$22.77
1775	FDG, per dose (4–40 mCi/ml)	H				
2210	Methyldopate hcl injection	K		$9.58		$1.92
2616	Brachytx source, Yttrium-90	H				
2632	Brachytx sol, I–125, per mCi	H				
2633	Brachytx source, Cesium-131	H				
2634	Brachytx source, HA, I–125	H				
2635	Brachytx source, HA, P–103	H				
2636	Brachytx linear source, P–103	H				
2730	Pralidoxime chloride inj	K		$76.68		$15.34
2770	Quinupristin/dalfopristin	K		$105.48		$21.10
2940	Somatrem injection	K		$43.14		$8.63
3030	Sumatriptan succinate	K		$51.03		$10.21
7000	Amifostine	K		$436.01		$87.20
7005	Gonadorelin hydroch	K		$173.44		$34.69
7011	Oprelvekin injection	K		$249.06		$49.81
7015	Busulfan, oral	K		$1.98		$0.40
7019	Aprotinin	K		$2.20		$0.44
7024	Corticorelin ovine triflutat	K		$386.53		$77.31
7025	Digoxin immune FAB (ovine)	K		$552.18		$110.44
7026	Ethanolamine oleate	K		$64.53		$12.91
7027	Fomepizole	K		$12.31		$2.46
7028	Fosphenytoin	K		$5.19		$1.04
7030	Hemin	K		$6.51		$1.30
7034	Somatropin injection	K		$42.93		$8.59
7035	Teniposide	K		$266.23		$53.25
7036	Urokinase inj	K		$415.69		$83.14

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
7037	Urofollitropin	K		$44.74		$8.95
7038	Monoclonal antibodies	K		$885.36		$177.07
7040	Pentastarch 10% solution	K		$12.45		$2.49
7041	Tirofiban hcl	K		$7.89		$1.58
7042	Capecitabine, oral	K		$3.30		$0.66
7043	Infliximab injection	K		$54.20		$10.84
7045	Trimetrexate glucoronate	K		$139.85		$27.97
7046	Doxorubicin hcl liposome inj	K		$365.64		$73.13
7048	Alteplase recombinant	K		$30.65		$6.13
7049	Filgrastim injection	K		$282.29		$56.46
7051	Leuprolide acetate implant	K		$2,262.19		$452.44
7308	Aminolevulinic acid hcl top	K		$96.79		$19.36
7316	Sodium hyaluronate injection	K		$110.65		$22.13
7515	Cyclosporine oral	K		$1.00		$0.20
9001	Linezolid injection	K		$24.15		$4.83
9002	Tenecteplase	K		$2,052.77		$410.55
9003	Palivizumab	K	4.1491	$246.22		$49.24
9004	Gemtuzumab ozogamicin	K		$2,245.04		$449.01
9005	Reteplase injection	K		$898.81		$179.76
9006	Tacrolimus injection	K		$126.61		$25.32
9008	Baclofen Refill Kit-500mcg	K	0.2447	$14.52		$2.90
9009	Baclofen refill kit—per 2000 mcg	K	0.7209	$42.78		$8.56
9012	Arsenic Trioxide	K		$33.76		$6.75
9015	Mycophenolate mofetil oral	K		$2.50		$0.50
9018	Botulinum toxin B	K		$7.89		$1.58
9019	Caspofungin acetate	K		$32.35		$6.47
9020	Sirolimus tablet	K		$6.85		$1.37
9022	IM inj interferon beta 1–a	K		$89.10		$17.82
9023	Rho d immune globulin	K		$25.08		$5.02
9024	Amphotericin b lipid complex	K		$11.95		$2.39
9025	Rubidium-Rb-82	H				
9030	Amphotericin B	K		$30.70		$6.14
9031	Arbutamine HCl injection	K		$163.15		$32.63
9032	Baclofen 10 MG injection	K		$188.01		$37.60
9033	Cidofovir injection	K		$782.98		$156.60
9038	Inj estrogen conjugate	K		$57.77		$11.55
9040	Intraocular Fomivirsen na	K		$203.93		$40.79
9042	Glucagon hydrochloride	K		$62.16		$12.43
9044	Ibutilide fumarate injection	K		$243.34		$48.67
9045	Iron dextran	K		$11.43		$2.29
9046	Iron sucrose injection	K		$0.38		$0.08
9047	Itraconazole injection	K		$36.93		$7.39
9051	Urea injection	K	1.0454	$62.04		$12.41
9054	Metabolically active tissue	K		$15.69		$3.14
9055	Injectable human tissue	K		$3.54		$0.71
9057	Lepirudin	K		$128.17		$25.63
9100	Iodinated I-131 serumalbumin, per 5uci	H				
9104	Anti-thymocycte globulin rabbit	K		$299.47		$59.89
9105	Hep B imm glob	K	1.8813	$111.64		$22.33
9108	Thyrotropin alfa	K		$712.58		$142.52
9110	Alemtuzumab injection	K		$516.87		$103.37
9112	Inj Perflutren lipid micros, ml	K		$63.51		$12.70
9114	Nesiritide	K		$75.19		$15.04
9115	Inj, zoledronic acid	K		$202.41		$40.48
9117	Yttrium 90 ibritumomab tiuxetan	H				
9118	In-111 ibritumomab tiuxetan	H				
9119	Pegfilgrastim	K		$2,178.28		$435.66
9120	Inj, Fulvestrant	K		$82.90		$16.58
9121	Inj, Argatroban	K	0.1897	$11.26		$2.25
9122	Triptorelin pamoate	K		$369.98		$74.00
9123	Transcyte	K		$719.41		$143.88
9124	Injection, daptomycin	G		$0.30		$0.06
9125	Risperidone, long acting	G		$4.71		$0.94
9126	Injection, natalizumab	G		$6.51		$1.30
9127	Paclitaxel protein pr	K		$8.59		$1.72
9128	Inj pegaptanib sodium	K		$1,074.27		$214.85
9130	Na chromateCr51, per 0.25mCi	H				
9132	51 Na Chromate, 50mCi	H				
9133	Rabies ig, im/sc	K		$64.56		$12.91

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCS) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS CALENDAR YEAR 2006—Continued

APC	Group title	SI	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
9134	Rabies ig, heat treated	K		$69.79		$13.96
9135	Varicella-zoster ig, im	K		$96.58		$19.32
9136	Adenovirus vaccine, type 4	K	0.9499	$56.37		$11.27
9137	Bcg vaccine, percut	K		$124.54		$24.91
9138	Hep a/hep b vacc, adult im	K	0.9674	$57.41		$11.48
9139	Rabies vaccine, im	K		$128.04		$25.61
9140	Rabies vaccine, id	K	1.4959	$88.77		$17.75
9141	Measles-rubella vaccine, sc	K	0.9467	$56.18		$11.24
9142	Chicken pox vaccine, sc	K		$64.29		$12.86
9143	Meningococcal vaccine, sc	K		$56.75		$11.35
9144	Encephalitis vaccine, sc	K		$67.73		$13.55
9145	Meningococcal vaccine, im	K	0.8948	$53.10		$10.62
9146	Technetium TC99m Disofenin	H				
9147	Technetium TC 99M Depreotide	H				
9148	I–123 sodium iodide capsule	H				
9149	Dx I131 so iodide microcurie	H				
9150	I–125 serum albumin micro	H				
9151	Tc 99M ARCITUMOMAB PER VIAL	H				
9152	Baclofen Intrathecal kit-1am	K	0.8562	$50.81		$10.16
9153	Na Iothalamate I–125, 10 uCi	H				
9154	Technetium tc99m glucepatate	H				
9155	Technetium tc99mlabeledrbcs	H				
9156	Nonmetabolic active tissue	K		$53.76		$10.75
9157	LOCM <=149 mg/ml iodine	K		$0.51		$0.10
9158	LOCM 150-199mg/ml iodine	K		$2.00		$0.40
9159	LOCM 200–249mg/ml iodine	K		$0.78		$0.16
9160	LOCM 250–299mg/ml iodine	K		$0.66		$0.13
9161	LOCM 300–349mg/ml iodine	K		$0.41		$0.08
9162	LOCM 350–399mg/ml iodine	K		$0.27		$0.05
9163	LOCM >= 400 mg/ml iodine	K		$0.20		$0.04
9164	Inj Gad-base MR contrast	K		$3.01		$0.60
9165	Oral MR contrast	K		$9.01		$1.80
9166	Dyphylline injection	K		$7.74		$1.55
9167	Valrubicin	K		$376.87		$75.37
9168	Pegademase bovine	K		$161.16		$32.23
9169	Anthrax vaccine, sc	K		$128.95		$25.79
9200	Orcel	K	2.6893	$159.59		$31.92
9201	Dermagraft	K	6.2066	$368.32		$73.66
9202	Inj Octafluoropropane mic,ml	K		$41.42		$8.28
9203	Inj Perflexane lipid micros, ml	K		$13.49		$2.70
9205	Oxaliplatin	K		$84.06		$16.81
9206	Integra	K		$9.23		$1.85
9207	Injection, bortezomib	K		$28.90		$5.78
9208	Injection, agalsidase beta	K		$123.35		$24.67
9209	Injection, laronidase	K		$23.16		$4.63
9210	Injection, palonosetron HCL	K		18.42		$3.68
9211	Inj, alefacept, IV	K		$571.01		$114.20
9212	Inj, alefacept, IM	K		$402.00		$80.40
9213	Injection, Pemetrexed	G		$41.29		$8.26
9214	Injection, Bevacizumab	G		$58.17		$11.63
9215	Injection, Cetuximab	G		$50.59		$10.12
9216	Abarelix Injection	G		$66.96		$13.39
9217	Leuprolide acetate suspnsion	K		$230.87		$46.17
9218	Injection, Azacitidine	K		$4.03		$0.81
9219	Mycophenolic Acid	G		$2.47		$0.49
9220	Sodium hyaluronate	G		$203.84		$40.77
9221	Graftjacket Reg Matrix	G		$1,234.36		$246.87
9222	Graftjacket SftTis	G		$890.74		$178.15
9300	Injection, Omalizumab	G		$15.98		$3.20
9500	Platelets, irradiated	K	1.3589	$80.64		$16.13
9501	Platelets, pheresis, leukocytes reduced	K	8.1495	$483.62		$96.72
9502	Platelet pheresis irradiated	K	5.1895	$307.96		$61.59
9503	Fresh frozen plasma, ea unit	K	1.6241	$96.38		$19.28
9504	RBC deglycerolized	K	6.4314	$381.66		$76.33
9505	RBC irradiated	K	2.3876	$141.69		$28.34
9506	Granulocytes, pheresis	K	15.6155	$926.67		$185.33
9507	Platelets, pheresis	K	6.8988	$409.40		$81.88
9508	Plasma, frozen w/in 8 hours	K	1.2038	$71.44		$14.29

6. On pages 42776–42965, Addendum B is corrected to read as follows:

ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0003T	S		Cervicography	1492		$15.00		$3.00
0008T	T		Upper gi endoscopy w/suture	0422	22.9647	$1,362.79	$448.81	$272.56
00100	N		Anesth, salivary gland					
00102	N		Anesth, repair of cleft lip					
00103	N		Anesth, blepharoplasty					
00104	N		Anesth, electroshock					
0010T	A		Tb test, gamma interferon					
00120	N		Anesth, ear surgery					
00124	N		Anesth, ear exam					
00126	N		Anesth, tympanotomy					
00140	N		Anesth, procedures on eye					
00142	N		Anesth, lens surgery					
00144	N		Anesth, corneal transplant					
00145	N		Anesth, vitreoretinal surg					
00147	N		Anesth, iridectomy					
00148	N		Anesth, eye exam					
00160	N		Anesth, nose/sinus surgery					
00162	N		Anesth, nose/sinus surgery					
00164	N		Anesth, biopsy of nose					
0016T	T		Thermotx choroid vasc lesion	0235	4.6593	$276.50	$67.40	$55.30
00170	N		Anesth, procedure on mouth					
00172	N		Anesth, cleft palate repair					
00174	N		Anesth, pharyngeal surgery					
00176	C		Anesth, pharyngeal surgery					
0017T	E		Photocoagulat macular drusen					
0018T	S		Transcranial magnetic stimul	0215	0.6115	$36.29	$14.51	$7.26
00190	N		Anesth, face/skull bone surg					
00192	C		Anesth, facial bone surgery					
0019T	E		Extracorp shock wave tx, ms					
0020T	B		Extracorp shock wave tx, ft					
00210	N		Anesth, open head surgery					
00212	N		Anesth, skull drainage					
00214	C		Anesth, skull drainage					
00215	C		Anesth, skull repair/fract					
00216	N		Anesth, head vessel surgery					
00218	N		Anesth, special head surgery					
0021T	C		Fetal oximetry, trnsvag/cerv					
00220	N		Anesth, intrcrn nerve					
00222	N		Anesth, head nerve surgery					
0023T	A		Phenotype drug test, hiv 1					
0024T	C		Transcath cardiac reduction					
0026T	A		Measure remnant lipoproteins					
0027T	T		Endoscopic epidural lysis	0220	17.3586	$1,030.11		$206.02
0028T	N		Dexa body composition study					
0029T	A		Magnetic tx for incontinence					
00300	N		Anesth, head/neck/ptrunk					
0030T	A		Antiprothrombin antibody					
0031T	N		Speculoscopy					
00320	N		Anesth, neck organ, 1 & over					
00322	N		Anesth, biopsy of thyroid					
00326	N		Anesth, larynx/trach, < 1 yr					
0032T	N		Speculoscopy w/direct sample					
0033T	C		Endovasc taa repr incl subcl					
0034T	C		Endovasc taa repr w/o subcl					
00350	N		Anesth, neck vessel surgery					
00352	N		Anesth, neck vessel surgery					
0035T	C		Insert endovasc prosth, taa					
0036T	C		Endovasc prosth, taa, add-on					
0037T	C		Artery transpose/endovas taa					
0038T	C		Rad endovasc taa rpr w/cover					
0039T	C		Rad s/i, endovasc taa repair					
00400	N		Anesth, skin, ext/per/atrunk					

* Code is subject to contiguous body area imaging discount policy discussed in Section XIV of this proposed rule.

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00402	N		Anesth, surgery of breast					
00404	C		Anesth, surgery of breast					
00406	C		Anesth, surgery of breast					
0040T	C		Rad s/i, endovasc taa prosth					
00410	N		Anesth, correct heart rhythm					
0041T	A		Detect ur infect agnt w/cpas					
0042T	N		Ct perfusion w/contrast, cbf					
0043T	A		Co expired gas analysis					
0044T	N		Whole body photography					
00450	N		Anesth, surgery of shoulder					
00452	C		Anesth, surgery of shoulder					
00454	N		Anesth, collar bone biopsy					
0045T	N		Whole body photography					
0046T	T		Cath lavage, mammary duct(s)	0021	14.9776	$888.82	$219.48	$177.76
00470	N		Anesth, removal of rib					
00472	N		Anesth, chest wall repair					
00474	C		Anesth, surgery of rib(s)					
0047T	T		Cath lavage, mammary duct(s)	0021	14.9776	$888.82	$219.48	$177.76
0048T	C		Implant ventricular device					
0049T	C		External circulation assist					
00500	N		Anesth, esophageal surgery					
0050T	C		Removal circulation assist					
0051T	C		Implant total heart system					
00520	N		Anesth, chest procedure					
00522	N		Anesth, chest lining biopsy					
00524	C		Anesth, chest drainage					
00528	N		Anesth, chest partition view					
00529	N		Anesth, chest partition view					
0052T	C		Replace component heart syst					
00530	N		Anesth, pacemaker insertion					
00532	N		Anesth, vascular access					
00534	N		Anesth, cardioverter/defib					
00537	N		Anesth, cardiac electrophys					
00539	N		Anesth, trach-bronch reconst					
0053T	C		Replace component heart syst					
00540	C		Anesth, chest surgery					
00541	N		Anesth, one lung ventilation					
00542	C		Anesth, release of lung					
00546	C		Anesth, lung,chest wall surg					
00548	N		Anesth, trachea,bronchi surg					
0054T	B		Bone surgery using computer					
00550	N		Anesth, sternal debridement					
0055T	B		Bone surgery using computer					
00560	C		Anesth, open heart surgery					
00561	C		Anesth, heart surg < age 1					
00562	C		Anesth, open heart surgery					
00563	N		Anesth, heart proc w/pump					
00566	N		Anesth, cabg w/o pump					
0056T	B		Bone surgery using computer					
00580	C		Anesth, heart/lung transplnt					
0058T	X		Cryopreservation, ovary tiss	0348	0.7927	$47.04		$9.41
0059T	X		Cryopreservation, oocyte	0348	0.7927	$47.04		$9.41
00600	N		Anesth, spine, cord surgery					
00604	C		Anesth, sitting procedure					
0060T	B		Electrical impedance scan					
0061T	B		Destruction of tumor, breast					
00620	N		Anesth, spine, cord surgery					
00622	C		Anesth, removal of nerves					
0062T	T		Rep intradisc annulus1 lev	0203	10.4015	$617.26	$246.90	$123.45
00630	N		Anesth, spine, cord surgery					
00632	C		Anesth, removal of nerves					
00634	N		Anesth for chemonucleolysis					
00635	N		Anesth, lumbar puncture					
0063T	T		Rep intradisc annulus>1lev	0203	10.4015	$617.26	$246.90	$123.45
00640	N		Anesth, spine manipulation					
0064T	A		Spectroscop eval expired gas					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0065T	A		Ocular photoscreen bilat					
0066T	E		Ct colonography screen					
00670	C		Anesth, spine, cord surgery					
0067T*	S		Ct colonography dx	0333	5.2836	$313.54	$125.41	$62.71
0068T	B		Interp/rept heart sound					
0069T	N		Analysis only heart sound					
00700	N		Anesth, abdominal wall surg					
00702	N		Anesth, for liver biopsy					
0070T	N		Interp only heart sound					
0071T	T		U/s leiomyomata ablate <200	0193	14.5843	$865.48		$173.10
0072T	T		U/s leiomyomata ablate >200	0193	14.5843	$865.48		$173.10
00730	N		Anesth, abdominal wall surg					
0073T	S		Delivery, comp imrt	0412	5.3643	$318.33		$63.67
00740	N		Anesth, upper gi visualize					
0074T	E		Online physician e/m					
00750	N		Anesth, repair of hernia					
00752	N		Anesth, repair of hernia					
00754	N		Anesth, repair of hernia					
00756	N		Anesth, repair of hernia					
0075T	C		Perq stent/chest vert art					
0076T	C		S&i stent/chest vert art					
00770	N		Anesth, blood vessel repair					
0077T	C		Cereb therm perfusion probe					
0078T	C		Endovasc aort repr w/device					
00790	N		Anesth, surg upper abdomen					
00792	C		Anesth, hemorr/excise liver					
00794	C		Anesth, pancreas removal					
00796	C		Anesth, for liver transplant					
00797	N		Anesth, surgery for obesity					
0079T	C		Endovasc visc extnsn repr					
00800	N		Anesth, abdominal wall surg					
00802	C		Anesth, fat layer removal					
0080T	C		Endovasc aort repr rad s&i					
00810	N		Anesth, low intestine scope					
0081T	C		Endovasc visc extnsn s&i					
00820	N		Anesth, abdominal wall surg					
0082T	B		Stereotactic rad delivery					
00830	N		Anesth, repair of hernia					
00832	N		Anesth, repair of hernia					
00834	N		Anesth, hernia repair< 1 yr					
00836	N		Anesth hernia repair preemie					
0083T	N		Stereotactic rad tx mngmt					
00840	N		Anesth, surg lower abdomen					
00842	N		Anesth, amniocentesis					
00844	C		Anesth, pelvis surgery					
00846	C		Anesth, hysterectomy					
00848	C		Anesth, pelvic organ surg					
0084T	T		Temp prostate urethral stent	0164	1.1855	$70.35	$17.29	$14.07
00851	N		Anesth, tubal ligation					
0085T	X		Breath test heart reject	0340	0.6384	$37.88		$7.58
00860	N		Anesth, surgery of abdomen					
00862	N		Anesth, kidney/ureter surg					
00864	C		Anesth, removal of bladder					
00865	C		Anesth, removal of prostate					
00866	C		Anesth, removal of adrenal					
00868	C		Anesth, kidney transplant					
0086T	N		L ventricle fill pressure					
00870	N		Anesth, bladder stone surg					
00872	N		Anesth kidney stone destruct					
00873	N		Anesth kidney stone destruct					
0087T	X		Sperm eval hyaluronan	0348	0.7927	$47.04		$9.41
00880	N		Anesth, abdomen vessel surg					
00882	C		Anesth, major vein ligation					
0088T	T		Rf tongue base vol reduxn	0253	16.1357	$957.54	$282.29	$191.51
00902	N		Anesth, anorectal surgery					
00904	C		Anesth, perineal surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00906	N		Anesth, removal of vulva					
00908	C		Anesth, removal of prostate					
00910	N		Anesth, bladder surgery					
00912	N		Anesth, bladder tumor surg					
00914	N		Anesth, removal of prostate					
00916	N		Anesth, bleeding control					
00918	N		Anesth, stone removal					
00920	N		Anesth, genitalia surgery					
00921	N		Anesth, vasectomy					
00922	N		Anesth, sperm duct surgery					
00924	N		Anesth, testis exploration					
00926	N		Anesth, removal of testis					
00928	N		Anesth, removal of testis					
00930	N		Anesth, testis suspension					
00932	C		Anesth, amputation of penis					
00934	C		Anesth, penis, nodes removal					
00936	C		Anesth, penis, nodes removal					
00938	N		Anesth, insert penis device					
00940	N		Anesth, vaginal procedures					
00942	N		Anesth, surg on vag/urethral					
00944	C		Anesth, vaginal hysterectomy					
00948	N		Anesth, repair of cervix					
00950	N		Anesth, vaginal endoscopy					
00952	N		Anesth, hysteroscope/graph					
01112	N		Anesth, bone aspirate/bx					
01120	N		Anesth, pelvis surgery					
01130	N		Anesth, body cast procedure					
01140	C		Anesth, amputation at pelvis					
01150	C		Anesth, pelvic tumor surgery					
01160	N		Anesth, pelvis procedure					
01170	N		Anesth, pelvis surgery					
01173	N		Anesth, fx repair, pelvis					
01180	N		Anesth, pelvis nerve removal					
01190	N		Anesth, pelvis nerve removal					
01200	N		Anesth, hip joint procedure					
01202	N		Anesth, arthroscopy of hip					
01210	N		Anesth, hip joint surgery					
01212	C		Anesth, hip disarticulation					
01214	C		Anesth, hip arthroplasty					
01215	N		Anesth, revise hip repair					
01220	N		Anesth, procedure on femur					
01230	N		Anesth, surgery of femur					
01232	C		Anesth, amputation of femur					
01234	C		Anesth, radical femur surg					
01250	N		Anesth, upper leg surgery					
01260	N		Anesth, upper leg veins surg					
01270	N		Anesth, thigh arteries surg					
01272	C		Anesth, femoral artery surg					
01274	C		Anesth, femoral embolectomy					
01320	N		Anesth, knee area surgery					
01340	N		Anesth, knee area procedure					
01360	N		Anesth, knee area surgery					
01380	N		Anesth, knee joint procedure					
01382	N		Anesth, dx knee arthroscopy					
01390	N		Anesth, knee area procedure					
01392	N		Anesth, knee area surgery					
01400	N		Anesth, knee joint surgery					
01402	C		Anesth, knee arthroplasty					
01404	C		Anesth, amputation at knee					
01420	N		Anesth, knee joint casting					
01430	N		Anesth, knee veins surgery					
01432	N		Anesth, knee vessel surg					
01440	N		Anesth, knee arteries surg					
01442	C		Anesth, knee artery surg					
01444	C		Anesth, knee artery repair					
01462	N		Anesth, lower leg procedure					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
01464	N		Anesth, ankle/ft arthroscopy					
01470	N		Anesth, lower leg surgery					
01472	N		Anesth, achilles tendon surg					
01474	N		Anesth, lower leg surgery					
01480	N		Anesth, lower leg bone surg					
01482	N		Anesth, radical leg surgery					
01484	N		Anesth, lower leg revision					
01486	C		Anesth, ankle replacement					
01490	N		Anesth, lower leg casting					
01500	N		Anesth, leg arteries surg					
01502	C		Anesth, lwr leg embolectomy					
01520	N		Anesth, lower leg vein surg					
01522	N		Anesth, lower leg vein surg					
01610	N		Anesth, surgery of shoulder					
01620	N		Anesth, shoulder procedure					
01622	N		Anes dx shoulder arthroscopy					
01630	N		Anesth, surgery of shoulder					
01632	C		Anesth, surgery of shoulder					
01634	C		Anesth, shoulder joint amput					
01636	C		Anesth, forequarter amput					
01638	C		Anesth, shoulder replacement					
01650	N		Anesth, shoulder artery surg					
01652	C		Anesth, shoulder vessel surg					
01654	C		Anesth, shoulder vessel surg					
01656	C		Anesth, arm-leg vessel surg					
01670	N		Anesth, shoulder vein surg					
01680	N		Anesth, shoulder casting					
01682	N		Anesth, airplane cast					
01710	N		Anesth, elbow area surgery					
01712	N		Anesth, uppr arm tendon surg					
01714	N		Anesth, uppr arm tendon surg					
01716	N		Anesth, biceps tendon repair					
01730	N		Anesth, uppr arm procedure					
01732	N		Anesth, dx elbow arthroscopy					
01740	N		Anesth, upper arm surgery					
01742	N		Anesth, humerus surgery					
01744	N		Anesth, humerus repair					
01756	C		Anesth, radical humerus surg					
01758	N		Anesth, humeral lesion surg					
01760	N		Anesth, elbow replacement					
01770	N		Anesth, uppr arm artery surg					
01772	N		Anesth, uppr arm embolectomy					
01780	N		Anesth, upper arm vein surg					
01782	N		Anesth, uppr arm vein repair					
01810	N		Anesth, lower arm surgery					
01820	N		Anesth, lower arm procedure					
01829	N		Anesth, dx wrist arthroscopy					
01830	N		Anesth, lower arm surgery					
01832	N		Anesth, wrist replacement					
01840	N		Anesth, lwr arm artery surg					
01842	N		Anesth, lwr arm embolectomy					
01844	N		Anesth, vascular shunt surg					
01850	N		Anesth, lower arm vein surg					
01852	N		Anesth, lwr arm vein repair					
01860	N		Anesth, lower arm casting					
01905	N		Anes, spine inject, x-ray/re					
01916	N		Anesth, dx arteriography					
01920	N		Anesth, catheterize heart					
01922	N		Anesth, cat or MRI scan					
01924	N		Anes, ther interven rad, art					
01925	N		Anes, ther interven rad, car					
01926	N		Anes, tx interv rad hrt/cran					
01930	N		Anes, ther interven rad, vei					
01931	N		Anes, ther interven rad, tip					
01932	N		Anes, tx interv rad, th vein					
01933	N		Anes, tx interv rad, cran v					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
01951	N		Anesth, burn, less 4 percent					
01952	N		Anesth, burn, 4-9 percent					
01953	N		Anesth, burn, each 9 percent					
01958	N		Anesth, antepartum manipul					
01960	N		Anesth, vaginal delivery					
01961	N		Anesth, cs delivery					
01962	N		Anesth, emer hysterectomy					
01963	N		Anesth, cs hysterectomy					
01964	N		Anesth, abortion procedures					
01967	N		Anesth/analg, vag delivery					
01968	N		Anes/analg cs deliver add-on					
01969	N		Anesth/analg cs hyst add-on					
01990	C		Support for organ donor					
01991	N		Anesth, nerve block/inj					
01992	N		Anesth, n block/inj, prone					
01995	N		Regional anesthesia limb					
01996	N		Hosp manage cont drug admin					
01999	N		Unlisted anesth procedure					
0500F	E		Initial prenatal care visit					
0501F	E		Prenatal flow sheet					
0502F	E		Subsequent prenatal care					
0503F	E		Postpartum care visit					
1000F	E		Tobacco use, smoking, assess					
1001F	E		Tobacco use, non-smoking					
10021	T		Fna w/o image	0002	0.9559	$56.73		$11.35
10022	T		Fna w/image	0036	2.1773	$129.21		$25.84
1002F	E		Assess anginal symptom/level					
10040	T		Acne surgery	0010	0.5719	$33.94	$9.65	$6.79
10060	T		Drainage of skin abscess	0006	1.55	$91.98	$22.28	$18.40
10061	T		Drainage of skin abscess	0006	1.55	$91.98	$22.28	$18.40
10080	T		Drainage of pilonidal cyst	0006	1.55	$91.98	$22.28	$18.40
10081	T		Drainage of pilonidal cyst	0007	11.4501	$679.48		$135.90
10120	T		Remove foreign body	0006	1.55	$91.98	$22.28	$18.40
10121	T		Remove foreign body	0021	14.9776	$888.82	$219.48	$177.76
10140	T		Drainage of hematoma/fluid	0007	11.4501	$679.48		$135.90
10160	T		Puncture drainage of lesion	0018	1.1726	$69.59	$16.04	$13.92
10180	T		Complex drainage, wound	0008	16.4989	$979.09		$195.82
11000	T		Debride infected skin	0015	1.6514	$98.00	$20.29	$19.60
11001	T		Debride infected skin add-on	0012	0.8497	$50.42	$11.18	$10.08
11004	C		Debride genitalia & perineum					
11005	C		Debride abdom wall					
11006	C		Debride genit/per/abdom wall					
11008	C		Remove mesh from abd wall					
11010	T		Debride skin, fx	0019	4.0547	$240.62	$71.87	$48.12
11011	T		Debride skin/muscle, fx	0019	4.0547	$240.62	$71.87	$48.12
11012	T		Debride skin/muscle/bone, fx	0019	4.0547	$240.62	$71.87	$48.12
11040	T		Debride skin, partial	0015	1.6514	$98.00	$20.29	$19.60
11041	T		Debride skin, full	0015	1.6514	$98.00	$20.29	$19.60
11042	T		Debride skin/tissue	0016	2.5834	$153.31	$33.57	$30.66
11043	T		Debride tissue/muscle	0016	2.5834	$153.31	$33.57	$30.66
11044	T		Debride tissue/muscle/bone	0682	6.9107	$410.10	$162.42	$82.02
11055	T		Trim skin lesion	0012	0.8497	$50.42	$11.18	$10.08
11056	T		Trim skin lesions, 2 to 4	0012	0.8497	$50.42	$11.18	$10.08
11057	T		Trim skin lesions, over 4	0013	1.1078	$65.74	$14.20	$13.15
11100	T		Biopsy, skin lesion	0018	1.1726	$69.59	$16.04	$13.92
11101	T		Biopsy, skin add-on	0018	1.1726	$69.59	$16.04	$13.92
11200	T		Removal of skin tags	0013	1.1078	$65.74	$14.20	$13.15
11201	T		Remove skin tags add-on	0015	1.6514	$98.00	$20.29	$19.60
11300	T		Shave skin lesion	0012	0.8497	$50.42	$11.18	$10.08
11301	T		Shave skin lesion	0012	0.8497	$50.42	$11.18	$10.08
11302	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11303	T		Shave skin lesion	0015	1.6514	$98.00	$20.29	$19.60
11305	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11306	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11307	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11308	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
11310	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11311	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11312	T		Shave skin lesion	0013	1.1078	$65.74	$14.20	$13.15
11313	T		Shave skin lesion	0016	2.5834	$153.31	$33.57	$30.66
11400	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11401	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11402	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11403	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11404	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11406	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11420	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11421	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11422	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11423	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11424	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11426	T		Removal of skin lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11440	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11441	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11442	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11443	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11444	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11446	T		Removal of skin lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11450	T		Removal, sweat gland lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11451	T		Removal, sweat gland lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11462	T		Removal, sweat gland lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11463	T		Removal, sweat gland lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11470	T		Removal, sweat gland lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11471	T		Removal, sweat gland lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11600	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11601	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11602	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11603	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11604	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11606	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11620	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11621	T		Removal of skin lesion	0019	4.0547	$240.62	$71.87	$48.12
11622	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11623	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11624	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11626	T		Removal of skin lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11640	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11641	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11642	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11643	T		Removal of skin lesion	0020	6.9433	$412.04	$107.40	$82.41
11644	T		Removal of skin lesion	0021	14.9776	$888.82	$219.48	$177.76
11646	T		Removal of skin lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11719	T		Trim nail(s)	0009	0.668	$39.64	$8.34	$7.93
11720	T		Debride nail, 1-5	0009	0.668	$39.64	$8.34	$7.93
11721	T		Debride nail, 6 or more	0009	0.668	$39.64	$8.34	$7.93
11730	T		Removal of nail plate	0013	1.1078	$65.74	$14.20	$13.15
11732	T		Remove nail plate, add-on	0012	0.8497	$50.42	$11.18	$10.08
11740	T		Drain blood from under nail	0009	0.668	$39.64	$8.34	$7.93
11750	T		Removal of nail bed	0019	4.0547	$240.62	$71.87	$48.12
11752	T		Remove nail bed/finger tip	0022	19.6472	$1,165.92	$354.45	$233.18
11755	T		Biopsy, nail unit	0019	4.0547	$240.62	$71.87	$48.12
11760	T		Repair of nail bed	0024	1.6084	$95.45	$31.25	$19.09
11762	T		Reconstruction of nail bed	0024	1.6084	$95.45	$31.25	$19.09
11765	T		Excision of nail fold, toe	0015	1.6514	$98.00	$20.29	$19.60
11770	T		Removal of pilonidal lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11771	T		Removal of pilonidal lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11772	T		Removal of pilonidal lesion	0022	19.6472	$1,165.92	$354.45	$233.18
11900	T		Injection into skin lesions	0012	0.8497	$50.42	$11.18	$10.08
11901	T		Added skin lesions injection	0012	0.8497	$50.42	$11.18	$10.08
11920	T		Correct skin color defects	0024	1.6084	$95.45	$31.25	$19.09
11921	T		Correct skin color defects	0024	1.6084	$95.45	$31.25	$19.09
11922	T		Correct skin color defects	0024	1.6084	$95.45	$31.25	$19.09

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CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
11950	T		Therapy for contour defects	0024	1.6084	$95.45	$31.25	$19.09
11951	T		Therapy for contour defects	0024	1.6084	$95.45	$31.25	$19.09
11952	T		Therapy for contour defects	0024	1.6084	$95.45	$31.25	$19.09
11954	T		Therapy for contour defects	0024	1.6084	$95.45	$31.25	$19.09
11960	T		Insert tissue expander(s)	0027	18.4182	$1,092.99	$329.72	$218.60
11970	T		Replace tissue expander	0027	18.4182	$1,092.99	$329.72	$218.60
11971	T		Remove tissue expander(s)	0022	19.6472	$1,165.92	$354.45	$233.18
11975	E		Insert contraceptive cap					
11976	T		Removal of contraceptive cap	0019	4.0547	$240.62	$71.87	$48.12
11977	E		Removal/reinsert contra cap					
11980	X		Implant hormone pellet(s)	0340	0.6384	$37.88		$7.58
11981	X		Insert drug implant device	0340	0.6384	$37.88		$7.58
11982	X		Remove drug implant device	0340	0.6384	$37.88		$7.58
11983	X		Remove/insert drug implant	0340	0.6384	$37.88		$7.58
12001	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12002	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12004	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12005	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12006	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12007	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12011	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12013	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12014	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12015	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12016	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12017	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12018	T		Repair superficial wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12020	T		Closure of split wound	0024	1.6084	$95.45	$31.25	$19.09
12021	T		Closure of split wound	0024	1.6084	$95.45	$31.25	$19.09
12031	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12032	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12034	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12035	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12036	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12037	T		Layer closure of wound(s)	0025	5.4938	$326.02	$101.85	$65.20
12041	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12042	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12044	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12045	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12046	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12047	T		Layer closure of wound(s)	0025	5.4938	$326.02	$101.85	$65.20
12051	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12052	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12053	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12054	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12055	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12056	T		Layer closure of wound(s)	0024	1.6084	$95.45	$31.25	$19.09
12057	T		Layer closure of wound(s)	0025	5.4938	$326.02	$101.85	$65.20
13100	T		Repair of wound or lesion	0025	5.4938	$326.02	$101.85	$65.20
13101	T		Repair of wound or lesion	0025	5.4938	$326.02	$101.85	$65.20
13102	T		Repair wound/lesion add-on	0024	1.6084	$95.45	$31.25	$19.09
13120	T		Repair of wound or lesion	0024	1.6084	$95.45	$31.25	$19.09
13121	T		Repair of wound or lesion	0024	1.6084	$95.45	$31.25	$19.09
13122	T		Repair wound/lesion add-on	0024	1.6084	$95.45	$31.25	$19.09
13131	T		Repair of wound or lesion	0024	1.6084	$95.45	$31.25	$19.09
13132	T		Repair of wound or lesion	0024	1.6084	$95.45	$31.25	$19.09
13133	T		Repair wound/lesion add-on	0024	1.6084	$95.45	$31.25	$19.09
13150	T		Repair of wound or lesion	0025	5.4938	$326.02	$101.85	$65.20
13151	T		Repair of wound or lesion	0024	1.6084	$95.45	$31.25	$19.09
13152	T		Repair of wound or lesion	0025	5.4938	$326.02	$101.85	$65.20
13153	T		Repair wound/lesion add-on	0024	1.6084	$95.45	$31.25	$19.09
13160	T		Late closure of wound	0027	18.4182	$1,092.99	$329.72	$218.60
14000	T		Skin tissue rearrangement	0686	13.8287	$820.64		$164.13
14001	T		Skin tissue rearrangement	0027	18.4182	$1,092.99	$329.72	$218.60
14020	T		Skin tissue rearrangement	0686	13.8287	$820.64		$164.13
14021	T		Skin tissue rearrangement	0027	18.4182	$1,092.99	$329.72	$218.60

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
14040	T		Skin tissue rearrangement	0686	13.8287	$820.64		$164.13
14041	T		Skin tissue rearrangement	0027	18.4182	$1,092.99	$329.72	$218.60
14060	T		Skin tissue rearrangement	0027	18.4182	$1,092.99	$329.72	$218.60
14061	T		Skin tissue rearrangement	0686	13.8287	$820.64		$164.13
14300	T		Skin tissue rearrangement	0027	18.4182	$1,092.99	$329.72	$218.60
14350	T		Skin tissue rearrangement	0027	18.4182	$1,092.99	$329.72	$218.60
15000	T		Skin graft	0025	5.4938	$326.02	$101.85	$65.20
15001	T		Skin graft add-on	0025	5.4938	$326.02	$101.85	$65.20
15050	T		Skin pinch graft	0025	5.4938	$326.02	$101.85	$65.20
15100	T		Skin split graft	0027	18.4182	$1,092.99	$329.72	$218.60
15101	T		Skin split graft add-on	0027	18.4182	$1,092.99	$329.72	$218.60
15120	T		Skin split graft	0027	18.4182	$1,092.99	$329.72	$218.60
15121	T		Skin split graft add-on	0027	18.4182	$1,092.99	$329.72	$218.60
15200	T		Skin full graft	0027	18.4182	$1,092.99	$329.72	$218.60
15201	T		Skin full graft add-on	0025	5.4938	$326.02	$101.85	$65.20
15220	T		Skin full graft	0027	18.4182	$1,092.99	$329.72	$218.60
15221	T		Skin full graft add-on	0025	5.4938	$326.02	$101.85	$65.20
15240	T		Skin full graft	0686	13.8287	$820.64		$164.13
15241	T		Skin full graft add-on	0025	5.4938	$326.02	$101.85	$65.20
15260	T		Skin full graft	0686	13.8287	$820.64		$164.13
15261	T		Skin full graft add-on	0025	5.4938	$326.02	$101.85	$65.20
15342	T		Cultured skin graft, 25 cm	0024	1.6084	$95.45	$31.25	$19.09
15343	T		Culture skn graft addl 25 cm	0024	1.6084	$95.45	$31.25	$19.09
15350	T		Skin homograft	0686	13.8287	$820.64		$164.13
15351	T		Skin homograft add-on	0686	13.8287	$820.64		$164.13
15400	T		Skin heterograft	0025	5.4938	$326.02	$101.85	$65.20
15401	T		Skin heterograft add-on	0025	5.4938	$326.02	$101.85	$65.20
15570	T		Form skin pedicle flap	0027	18.4182	$1,092.99	$329.72	$218.60
15572	T		Form skin pedicle flap	0027	18.4182	$1,092.99	$329.72	$218.60
15574	T		Form skin pedicle flap	0027	18.4182	$1,092.99	$329.72	$218.60
15576	T		Form skin pedicle flap	0686	13.8287	$820.64		$164.13
15600	T		Skin graft	0027	18.4182	$1,092.99	$329.72	$218.60
15610	T		Skin graft	0027	18.4182	$1,092.99	$329.72	$218.60
15620	T		Skin graft	0027	18.4182	$1,092.99	$329.72	$218.60
15630	T		Skin graft	0027	18.4182	$1,092.99	$329.72	$218.60
15650	T		Transfer skin pedicle flap	0027	18.4182	$1,092.99	$329.72	$218.60
15732	T		Muscle-skin graft, head/neck	0027	18.4182	$1,092.99	$329.72	$218.60
15734	T		Muscle-skin graft, trunk	0027	18.4182	$1,092.99	$329.72	$218.60
15736	T		Muscle-skin graft, arm	0027	18.4182	$1,092.99	$329.72	$218.60
15738	T		Muscle-skin graft, leg	0027	18.4182	$1,092.99	$329.72	$218.60
15740	T		Island pedicle flap graft	0686	13.8287	$820.64		$164.13
15750	T		Neurovascular pedicle graft	0027	18.4182	$1,092.99	$329.72	$218.60
15756	C		Free muscle flap, microvasc					
15757	C		Free skin flap, microvasc					
15758	C		Free fascial flap, microvasc					
15760	T		Composite skin graft	0027	18.4182	$1,092.99	$329.72	$218.60
15770	T		Derma-fat-fascia graft	0027	18.4182	$1,092.99	$329.72	$218.60
15775	T		Hair transplant punch grafts	0025	5.4938	$326.02	$101.85	$65.20
15776	T		Hair transplant punch grafts	0025	5.4938	$326.02	$101.85	$65.20
15780	T		Abrasion treatment of skin	0022	19.6472	$1,165.92	$354.45	$233.18
15781	T		Abrasion treatment of skin	0019	4.0547	$240.62	$71.87	$48.12
15782	T		Dressing change not for burn	0019	4.0547	$240.62	$71.87	$48.12
15783	T		Abrasion treatment of skin	0016	2.5834	$153.31	$33.57	$30.66
15786	T		Abrasion, lesion, single	0013	1.1078	$65.74	$14.20	$13.15
15787	T		Abrasion, lesions, add-on	0013	1.1078	$65.74	$14.20	$13.15
15788	T		Chemical peel, face, epiderm	0012	0.8497	$50.42	$11.18	$10.08
15789	T		Chemical peel, face, dermal	0015	1.6514	$98.00	$20.29	$19.60
15792	T		Chemical peel, nonfacial	0013	1.1078	$65.74	$14.20	$13.15
15793	T		Chemical peel, nonfacial	0012	0.8497	$50.42	$11.18	$10.08
15810	T		Salabrasion	0016	2.5834	$153.31	$33.57	$30.66
15811	T		Salabrasion	0016	2.5834	$153.31	$33.57	$30.66
15819	T		Plastic surgery, neck	0025	5.4938	$326.02	$101.85	$65.20
15820	T		Revision of lower eyelid	0027	18.4182	$1,092.99	$329.72	$218.60
15821	T		Revision of lower eyelid	0027	18.4182	$1,092.99	$329.72	$218.60
15822	T		Revision of upper eyelid	0027	18.4182	$1,092.99	$329.72	$218.60
15823	T		Revision of upper eyelid	0027	18.4182	$1,092.99	$329.72	$218.60

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
15824	T		Removal of forehead wrinkles	0027	18.4182	$1,092.99	$329.72	$218.60
15825	T		Removal of neck wrinkles	0027	18.4182	$1,092.99	$329.72	$218.60
15826	T		Removal of brow wrinkles	0027	18.4182	$1,092.99	$329.72	$218.60
15828	T		Removal of face wrinkles	0027	18.4182	$1,092.99	$329.72	$218.60
15829	T		Removal of skin wrinkles	0027	18.4182	$1,092.99	$329.72	$218.60
15831	T		Excise excessive skin tissue	0022	19.6472	$1,165.92	$354.45	$233.18
15832	T		Excise excessive skin tissue	0022	19.6472	$1,165.92	$354.45	$233.18
15833	T		Excise excessive skin tissue	0022	19.6472	$1,165.92	$354.45	$233.18
15834	T		Excise excessive skin tissue	0022	19.6472	$1,165.92	$354.45	$233.18
15835	T		Excise excessive skin tissue	0025	5.4938	$326.02	$101.85	$65.20
15836	T		Excise excessive skin tissue	0021	14.9776	$888.82	$219.48	$177.76
15837	T		Excise excessive skin tissue	0021	14.9776	$888.82	$219.48	$177.76
15838	T		Excise excessive skin tissue	0021	14.9776	$888.82	$219.48	$177.76
15839	T		Excise excessive skin tissue	0021	14.9776	$888.82	$219.48	$177.76
15840	T		Graft for face nerve palsy	0027	18.4182	$1,092.99	$329.72	$218.60
15841	T		Graft for face nerve palsy	0027	18.4182	$1,092.99	$329.72	$218.60
15842	T		Flap for face nerve palsy	0027	18.4182	$1,092.99	$329.72	$218.60
15845	T		Skin and muscle repair, face	0027	18.4182	$1,092.99	$329.72	$218.60
15850	T		Removal of sutures	0016	2.5834	$153.31	$33.57	$30.66
15851	T		Removal of sutures	0016	2.5834	$153.31	$33.57	$30.66
15852	X		Dressing change not for burn	0340	0.6384	$37.88		$7.58
15860	X		Test for blood flow in graft	0359	0.8312	$49.33		$9.87
15876	T		Suction assisted lipectomy	0027	18.4182	$1,092.99	$329.72	$218.60
15877	T		Suction assisted lipectomy	0027	18.4182	$1,092.99	$329.72	$218.60
15878	T		Suction assisted lipectomy	0686	13.8287	$820.64		$164.13
15879	T		Suction assisted lipectomy	0027	18.4182	$1,092.99	$329.72	$218.60
15920	T		Removal of tail bone ulcer	0019	4.0547	$240.62	$71.87	$48.12
15922	T		Removal of tail bone ulcer	0027	18.4182	$1,092.99	$329.72	$218.60
15931	T		Remove sacrum pressure sore	0022	19.6472	$1,165.92	$354.45	$233.18
15933	T		Remove sacrum pressure sore	0022	19.6472	$1,165.92	$354.45	$233.18
15934	T		Remove sacrum pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15935	T		Remove sacrum pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15936	T		Remove sacrum pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15937	T		Remove sacrum pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15940	T		Remove hip pressure sore	0022	19.6472	$1,165.92	$354.45	$233.18
15941	T		Remove hip pressure sore	0022	19.6472	$1,165.92	$354.45	$233.18
15944	T		Remove hip pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15945	T		Remove hip pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15946	T		Remove hip pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15950	T		Remove thigh pressure sore	0022	19.6472	$1,165.92	$354.45	$233.18
15951	T		Remove thigh pressure sore	0022	19.6472	$1,165.92	$354.45	$233.18
15952	T		Remove thigh pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15953	T		Remove thigh pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15956	T		Remove thigh pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15958	T		Remove thigh pressure sore	0027	18.4182	$1,092.99	$329.72	$218.60
15999	T		Removal of pressure sore	0019	4.0547	$240.62	$71.87	$48.12
16000	T		Initial treatment of burn(s)	0012	0.8497	$50.42	$11.18	$10.08
16010	T		Treatment of burn(s)	0016	2.5834	$153.31	$33.57	$30.66
16015	T		Treatment of burn(s)	0017	18.4211	$1,093.16	$227.84	$218.63
16020	T		Treatment of burn(s)	0013	1.1078	$65.74	$14.20	$13.15
16025	T		Treatment of burn(s)	0013	1.1078	$65.74	$14.20	$13.15
16030	T		Treatment of burn(s)	0015	1.6514	$98.00	$20.29	$19.60
16035	C		Incision of burn scab, initi					
16036	C		Escharotomy addl incision					
17000	T		Destroy benign/premlg lesion	0010	0.5719	$33.94	$9.65	$6.79
17003	T		Destroy lesions, 2-14	0010	0.5719	$33.94	$9.65	$6.79
17004	T		Destroy lesions, 15 or more	0011	2.0839	$123.66	$25.17	$24.73
17106	T		Destruction of skin lesions	0011	2.0839	$123.66	$25.17	$24.73
17107	T		Destruction of skin lesions	0011	2.0839	$123.66	$25.17	$24.73
17108	T		Destruction of skin lesions	0011	2.0839	$123.66	$25.17	$24.73
17110	T		Destruct lesion, 1-14	0010	0.5719	$33.94	$9.65	$6.79
17111	T		Destruct lesion, 15 or more	0010	0.5719	$33.94	$9.65	$6.79
17250	T		Chemical cautery, tissue	0013	1.1078	$65.74	$14.20	$13.15
17260	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17261	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17262	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
17263	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17264	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17266	T		Destruction of skin lesions	0016	2.5834	$153.31	$33.57	$30.66
17270	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17271	T		Destruction of skin lesions	0013	1.1078	$65.74	$14.20	$13.15
17272	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17273	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17274	T		Destruction of skin lesions	0016	2.5834	$153.31	$33.57	$30.66
17276	T		Destruction of skin lesions	0016	2.5834	$153.31	$33.57	$30.66
17280	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17281	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17282	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17283	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17284	T		Destruction of skin lesions	0016	2.5834	$153.31	$33.57	$30.66
17286	T		Destruction of skin lesions	0015	1.6514	$98.00	$20.29	$19.60
17304	T		Chemosurgery of skin lesion	0694	3.8452	$228.19	$61.86	$45.64
17305	T		2 stage mohs, up to 5 spec	0694	3.8452	$228.19	$61.86	$45.64
17306	T		3 stage mohs, up to 5 spec	0694	3.8452	$228.19	$61.86	$45.64
17307	T		Mohs addl stage up to 5 spec	0694	3.8452	$228.19	$61.86	$45.64
17310	T		Extensive skin chemosurgery	0694	3.8452	$228.19	$61.86	$45.64
17340	T		Cryotherapy of skin	0012	0.8497	$50.42	$11.18	$10.08
17360	T		Skin peel therapy	0013	1.1078	$65.74	$14.20	$13.15
17380	T		Hair removal by electrolysis	0013	1.1078	$65.74	$14.20	$13.15
17999	T		Skin tissue procedure	0006	1.55	$91.98	$22.28	$18.40
19000	T		Drainage of breast lesion	0004	1.7646	$104.72	$22.36	$20.94
19001	T		Drain breast lesion add-on	0004	1.7646	$104.72	$22.36	$20.94
19020	T		Incision of breast lesion	0008	16.4989	$979.09		$195.82
19030	N		Injection for breast x-ray					
19100	T		Bx breast percut w/o image	0005	3.5994	$213.60	$71.59	$42.72
19101	T		Biopsy of breast, open	0028	19.5801	$1,161.94	$303.74	$232.39
19102	T		Bx breast percut w/image	0005	3.5994	$213.60	$71.59	$42.72
19103	T		Bx breast percut w/device	0658	6.1049	$362.28		$72.46
19110	T		nipple exploration	0028	19.5801	$1,161.94	$303.74	$232.39
19112	T		Excise breast duct fistula	0028	19.5801	$1,161.94	$303.74	$232.39
19120	T		Removal of breast lesion	0028	19.5801	$1,161.94	$303.74	$232.39
19125	T		Excision, breast lesion	0028	19.5801	$1,161.94	$303.74	$232.39
19126	T		Excision, addl breast lesion	0028	19.5801	$1,161.94	$303.74	$232.39
19140	T		Removal of breast tissue	0028	19.5801	$1,161.94	$303.74	$232.39
19160	T		Removal of breast tissue	0028	19.5801	$1,161.94	$303.74	$232.39
19162	T		Remove breast tissue, nodes	0693	42.2254	$2,505.78	$798.17	$501.16
19180	T		Removal of breast	0029	32.0476	$1,901.80	$632.64	$380.36
19182	T		Removal of breast	0029	32.0476	$1,901.80	$632.64	$380.36
19200	C		Removal of breast					
19220	C		Removal of breast					
19240	T		Removal of breast	0030	40.0825	$2,378.62	$763.55	$475.72
19260	T		Removal of chest wall lesion	0021	14.9776	$888.82	$219.48	$177.76
19271	C		Revision of chest wall					
19272	C		Extensive chest wall surgery					
19290	N		Place needle wire, breast					
19291	N		Place needle wire, breast					
19295	S		Place breast clip, percut	0657	1.7092	$101.43		$20.29
19296	S		Place po breast cath for rad	1524		$3,250.00		$650.00
19297	S		Place breast cath for rad	1523		$2,750.00		$550.00
19298	S		Place breast rad tube/caths	1524		$3,250.00		$650.00
19316	T		Suspension of breast	0029	32.0476	$1,901.80	$632.64	$380.36
19318	T		Reduction of large breast	0693	42.2254	$2,505.78	$798.17	$501.16
19324	T		Enlarge breast	0693	42.2254	$2,505.78	$798.17	$501.16
19325	T		Enlarge breast with implant	0648	50.4459	$2,993.61		$598.72
19328	T		Removal of breast implant	0029	32.0476	$1,901.80	$632.64	$380.36
19330	T		Removal of implant material	0029	32.0476	$1,901.80	$632.64	$380.36
19340	T		Immediate breast prosthesis	0030	40.0825	$2,378.62	$763.55	$475.72
19342	T		Delayed breast prosthesis	0648	50.4459	$2,993.61		$598.72
19350	T		Breast reconstruction	0028	19.5801	$1,161.94	$303.74	$232.39
19355	T		Correct inverted nipple(s)	0029	32.0476	$1,901.80	$632.64	$380.36
19357	T		Breast reconstruction	0648	50.4459	$2,993.61		$598.72
19361	C		Breast reconstruction					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
19364	C		Breast reconstruction					
19366	T		Breast reconstruction	0029	32.0476	$1,901.80	$632.64	$380.36
19367	C		Breast reconstruction					
19368	C		Breast reconstruction					
19369	C		Breast reconstruction					
19370	T		Surgery of breast capsule	0029	32.0476	$1,901.80	$632.64	$380.36
19371	T		Removal of breast capsule	0029	32.0476	$1,901.80	$632.64	$380.36
19380	T		Revise breast reconstruction	0030	40.0825	$2,378.62	$763.55	$475.72
19396	T		Design custom breast implant	0029	32.0476	$1,901.80	$632.64	$380.36
19499	T		Breast surgery procedure	0028	19.5801	$1,161.94	$303.74	$232.39
20000	T		Incision of abscess	0006	1.55	$91.98	$22.28	$18.40
20005	T		Incision of deep abscess	0049	20.3707	$1,208.86		$241.77
2000F	E		Blood pressure, measured					
20100	T		Explore wound, neck	0023	4.7775	$283.51		$56.70
20101	T		Explore wound, chest	0027	18.4182	$1,092.99	$329.72	$218.60
20102	T		Explore wound, abdomen	0027	18.4182	$1,092.99	$329.72	$218.60
20103	T		Explore wound, extremity	0023	4.7775	$283.51		$56.70
20150	T		Excise epiphyseal bar	0051	36.5271	$2,167.63		$433.53
20200	T		Muscle biopsy	0021	14.9776	$888.82	$219.48	$177.76
20205	T		Deep muscle biopsy	0021	14.9776	$888.82	$219.48	$177.76
20206	T		Needle biopsy, muscle	0005	3.5994	$213.60	$71.59	$42.72
20220	T		Bone biopsy, trocar/needle	0019	4.0547	$240.62	$71.87	$48.12
20225	T		Bone biopsy, trocar/needle	0020	6.9433	$412.04	$107.40	$82.41
20240	T		Bone biopsy, excisional	0022	19.6472	$1,165.92	$354.45	$233.18
20245	T		Bone biopsy, excisional	0022	19.6472	$1,165.92	$354.45	$233.18
20250	T		Open bone biopsy	0049	20.3707	$1,208.86		$241.77
20251	T		Open bone biopsy	0049	20.3707	$1,208.86		$241.77
20500	T		Injection of sinus tract	0251	2.0101	$119.29		$23.86
20501	N		Inject sinus tract for x-ray					
20520	T		Removal of foreign body	0019	4.0547	$240.62	$71.87	$48.12
20525	T		Removal of foreign body	0022	19.6472	$1,165.92	$354.45	$233.18
20526	T		Ther injection, carp tunnel	0204	2.191	$130.02	$40.13	$26.00
20550	T		Inject tendon/ligament/cyst	0204	2.191	$130.02	$40.13	$26.00
20551	T		Inj tendon origin/insertion	0204	2.191	$130.02	$40.13	$26.00
20552	T		Inj trigger point, 1/2 muscl	0204	2.191	$130.02	$40.13	$26.00
20553	T		Inject trigger points, > 3	0204	2.191	$130.02	$40.13	$26.00
20600	T		Drain/inject, joint/bursa	0204	2.191	$130.02	$40.13	$26.00
20605	T		Drain/inject, joint/bursa	0204	2.191	$130.02	$40.13	$26.00
20610	T		Drain/inject, joint/bursa	0204	2.191	$130.02	$40.13	$26.00
20612	T		Aspirate/inj ganglion cyst	0204	2.191	$130.02	$40.13	$26.00
20615	T		Treatment of bone cyst	0004	1.7646	$104.72	$22.36	$20.94
20650	T		Insert and remove bone pin	0049	20.3707	$1,208.86		$241.77
20660	C		Apply, rem fixation device					
20661	C		Application of head brace					
20662	T		Application of pelvis brace	0049	20.3707	$1,208.86		$241.77
20663	T		Application of thigh brace	0049	20.3707	$1,208.86		$241.77
20664	C		Halo brace application					
20665	X		Removal of fixation device	0340	0.6384	$37.88		$7.58
20670	T		Removal of support implant	0021	14.9776	$888.82	$219.48	$177.76
20680	T		Removal of support implant	0022	19.6472	$1,165.92	$354.45	$233.18
20690	T		Apply bone fixation device	0050	23.9081	$1,418.78		$283.76
20692	T		Apply bone fixation device	0050	23.9081	$1,418.78		$283.76
20693	T		Adjust bone fixation device	0049	20.3707	$1,208.86		$241.77
20694	T		Remove bone fixation device	0049	20.3707	$1,208.86		$241.77
20802	C		Replantation, arm, complete					
20805	C		Replant forearm, complete					
20808	C		Replantation hand, complete					
20816	C		Replantation digit, complete					
20822	T		Replantation digit, complete	0054	25.3711	$1,505.60		$301.12
20824	C		Replantation thumb, complete					
20827	C		Replantation thumb, complete					
20838	C		Replantation foot, complete					
20900	T		Removal of bone for graft	0050	23.9081	$1,418.78		$283.76
20902	T		Removal of bone for graft	0050	23.9081	$1,418.78		$283.76
20910	T		Remove cartilage for graft	0027	18.4182	$1,092.99	$329.72	$218.60
20912	T		Remove cartilage for graft	0027	18.4182	$1,092.99	$329.72	$218.60

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
20920	T		Removal of fascia for graft	0686	13.8287	$820.64		$164.13
20922	T		Removal of fascia for graft	0027	18.4182	$1,092.99	$329.72	$218.60
20924	T		Removal of tendon for graft	0050	23.9081	$1,418.78		$283.76
20926	T		Removal of tissue for graft	0686	13.8287	$820.64		$164.13
20930	C		Spinal bone allograft					
20931	C		Spinal bone allograft					
20936	C		Spinal bone autograft					
20937	C		Spinal bone autograft					
20938	C		Spinal bone autograft					
20950	T		Fluid pressure, muscle	0006	1.55	$91.98	$22.28	$18.40
20955	C		Fibula bone graft, microvasc					
20956	C		Iliac bone graft, microvasc					
20957	C		Mt bone graft, microvasc					
20962	C		Other bone graft, microvasc					
20969	C		Bone/skin graft, microvasc					
20970	C		Bone/skin graft, iliac crest					
20972	T		Bone/skin graft, metatarsal	0056	40.2957	$2,391.27		$478.25
20973	T		Bone/skin graft, great toe	0056	40.2957	$2,391.27		$478.25
20974	A		Electrical bone stimulation					
20975	X		Electrical bone stimulation	0340	0.6384	$37.88		$7.58
20979	A		Us bone stimulation					
20982	T		Ablate, bone tumor(s) perq	1557		$1,850.00		$370.00
20999	T		Musculoskeletal surgery	0049	20.3707	$1,208.86		$241.77
21010	T		Incision of jaw joint	0254	23.404	$1,388.86	$321.35	$277.77
21015	T		Resection of facial tumor	0253	16.1357	$957.54	$282.29	$191.51
21025	T		Excision of bone, lower jaw	0256	37.3204	$2,214.70		$442.94
21026	T		Excision of facial bone(s)	0256	37.3204	$2,214.70		$442.94
21029	T		Contour of face bone lesion	0256	37.3204	$2,214.70		$442.94
21030	T		Removal of face bone lesion	0254	23.404	$1,388.86	$321.35	$277.77
21031	T		Remove exostosis, mandible	0254	23.404	$1,388.86	$321.35	$277.77
21032	T		Remove exostosis, maxilla	0254	23.404	$1,388.86	$321.35	$277.77
21034	T		Removal of face bone lesion	0256	37.3204	$2,214.70		$442.94
21040	T		Removal of jaw bone lesion	0254	23.404	$1,388.86	$321.35	$277.77
21044	T		Removal of jaw bone lesion	0256	37.3204	$2,214.70		$442.94
21045	C		Extensive jaw surgery					
21046	T		Remove mandible cyst complex	0256	37.3204	$2,214.70		$442.94
21047	T		Excise lwr jaw cyst w/repair	0256	37.3204	$2,214.70		$442.94
21048	T		Remove maxilla cyst complex	0256	37.3204	$2,214.70		$442.94
21049	T		Excis uppr jaw cyst w/repair	0256	37.3204	$2,214.70		$442.94
21050	T		Removal of jaw joint	0256	37.3204	$2,214.70		$442.94
21060	T		Remove jaw joint cartilage	0256	37.3204	$2,214.70		$442.94
21070	T		Remove coronoid process	0256	37.3204	$2,214.70		$442.94
21076	T		Prepare face/oral prosthesis	0254	23.404	$1,388.86	$321.35	$277.77
21077	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21079	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21080	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21081	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21082	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21083	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21084	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21085	T		Prepare face/oral prosthesis	0253	16.1357	$957.54	$282.29	$191.51
21086	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21087	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21088	T		Prepare face/oral prosthesis	0256	37.3204	$2,214.70		$442.94
21089	T		Prepare face/oral prosthesis	0251	2.0101	$119.29		$23.86
21100	T		Maxillofacial fixation	0256	37.3204	$2,214.70		$442.94
21110	T		Interdental fixation	0252	7.8673	$466.87	$113.41	$93.37
21116	N		Injection, jaw joint x-ray					
21120	T		Reconstruction of chin	0254	23.404	$1,388.86	$321.35	$277.77
21121	T		Reconstruction of chin	0254	23.404	$1,388.86	$321.35	$277.77
21122	T		Reconstruction of chin	0254	23.404	$1,388.86	$321.35	$277.77
21123	T		Reconstruction of chin	0254	23.404	$1,388.86	$321.35	$277.77
21125	T		Augmentation, lower jaw bone	0254	23.404	$1,388.86	$321.35	$277.77
21127	T		Augmentation, lower jaw bone	0256	37.3204	$2,214.70		$442.94
21137	T		Reduction of forehead	0254	23.404	$1,388.86	$321.35	$277.77
21138	T		Reduction of forehead	0256	37.3204	$2,214.70		$442.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21139	T		Reduction of forehead	0256	37.3204	$2,214.70		$442.94
21141	C		Reconstruct midface, lefort					
21142	C		Reconstruct midface, lefort					
21143	C		Reconstruct midface, lefort					
21145	C		Reconstruct midface, lefort					
21146	C		Reconstruct midface, lefort					
21147	C		Reconstruct midface, lefort					
21150	T		Reconstruct midface, lefort	0256	37.3204	$2,214.70		$442.94
21151	C		Reconstruct midface, lefort					
21154	C		Reconstruct midface, lefort					
21155	C		Reconstruct midface, lefort					
21159	C		Reconstruct midface, lefort					
21160	C		Reconstruct midface, lefort					
21172	C		Reconstruct orbit/forehead					
21175	T		Reconstruct orbit/forehead	0256	37.3204	$2,214.70		$442.94
21179	C		Reconstruct entire forehead					
21180	C		Reconstruct entire forehead					
21181	T		Contour cranial bone lesion	0254	23.404	$1,388.86	$321.35	$277.77
21182	C		Reconstruct cranial bone					
21183	C		Reconstruct cranial bone					
21184	C		Reconstruct cranial bone					
21188	C		Reconstruction of midface					
21193	C		Reconst lwr jaw w/o graft					
21194	C		Reconst lwr jaw w/graft					
21195	T		Reconst lwr jaw w/o fixation	0256	37.3204	$2,214.70		$442.94
21196	C		Reconst lwr jaw w/fixation					
21198	T		Reconstr lwr jaw segment	0256	37.3204	$2,214.70		$442.94
21199	T		Reconstr lwr jaw w/advance	0256	37.3204	$2,214.70		$442.94
21206	T		Reconstruct upper jaw bone	0256	37.3204	$2,214.70		$442.94
21208	T		Augmentation of facial bones	0256	37.3204	$2,214.70		$442.94
21209	T		Reduction of facial bones	0256	37.3204	$2,214.70		$442.94
21210	T		Face bone graft	0256	37.3204	$2,214.70		$442.94
21215	T		Lower jaw bone graft	0256	37.3204	$2,214.70		$442.94
21230	T		Rib cartilage graft	0256	37.3204	$2,214.70		$442.94
21235	T		Ear cartilage graft	0254	23.404	$1,388.86	$321.35	$277.77
21240	T		Reconstruction of jaw joint	0256	37.3204	$2,214.70		$442.94
21242	T		Reconstruction of jaw joint	0256	37.3204	$2,214.70		$442.94
21243	T		Reconstruction of jaw joint	0256	37.3204	$2,214.70		$442.94
21244	T		Reconstruction of lower jaw	0256	37.3204	$2,214.70		$442.94
21245	T		Reconstruction of jaw	0256	37.3204	$2,214.70		$442.94
21246	T		Reconstruction of jaw	0256	37.3204	$2,214.70		$442.94
21247	C		Reconstruct lower jaw bone					
21248	T		Reconstruction of jaw	0256	37.3204	$2,214.70		$442.94
21249	T		Reconstruction of jaw	0256	37.3204	$2,214.70		$442.94
21255	C		Reconstruct lower jaw bone					
21256	C		Reconstruction of orbit					
21260	T		Revise eye sockets	0256	37.3204	$2,214.70		$442.94
21261	T		Revise eye sockets	0256	37.3204	$2,214.70		$442.94
21263	T		Revise eye sockets	0256	37.3204	$2,214.70		$442.94
21267	T		Revise eye sockets	0256	37.3204	$2,214.70		$442.94
21268	C		Revise eye sockets					
21270	T		Augmentation, cheek bone	0256	37.3204	$2,214.70		$442.94
21275	T		Revision, orbitofacial bones	0256	37.3204	$2,214.70		$442.94
21280	T		Revision of eyelid	0256	37.3204	$2,214.70		$442.94
21282	T		Revision of eyelid	0253	16.1357	$957.54	$282.29	$191.51
21295	T		Revision of jaw muscle/bone	0252	7.8673	$466.87	$113.41	$93.37
21296	T		Revision of jaw muscle/bone	0254	23.404	$1,388.86	$321.35	$277.77
21299	T		Cranio/maxillofacial surgery	0251	2.0101	$119.29		$23.86
21300	T		Treatment of skull fracture	0253	16.1357	$957.54	$282.29	$191.51
21310	T		Treatment of nose fracture	0251	2.0101	$119.29		$23.86
21315	T		Treatment of nose fracture	0251	2.0101	$119.29		$23.86
21320	T		Treatment of nose fracture	0252	7.8673	$466.87	$113.41	$93.37
21325	T		Treatment of nose fracture	0254	23.404	$1,388.86	$321.35	$277.77
21330	T		Treatment of nose fracture	0254	23.404	$1,388.86	$321.35	$277.77
21335	T		Treatment of nose fracture	0254	23.404	$1,388.86	$321.35	$277.77
21336	T		Treat nasal septal fracture	0046	37.7023	$2,237.37	$535.76	$447.47

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21337	T		Treat nasal septal fracture	0253	16.1357	$957.54	$282.29	$191.51
21338	T		Treat nasoethmoid fracture	0254	23.404	$1,388.86	$321.35	$277.77
21339	T		Treat nasoethmoid fracture	0254	23.404	$1,388.86	$321.35	$277.77
21340	T		Treatment of nose fracture	0256	37.3204	$2,214.70		$442.94
21343	C		Treatment of sinus fracture					
21344	C		Treatment of sinus fracture					
21345	T		Treat nose/jaw fracture	0254	23.404	$1,388.86	$321.35	$277.77
21346	C		Treat nose/jaw fracture					
21347	C		Treat nose/jaw fracture					
21348	C		Treat nose/jaw fracture					
21355	T		Treat cheek bone fracture	0256	37.3204	$2,214.70		$442.94
21356	T		Treat cheek bone fracture	0254	23.404	$1,388.86	$321.35	$277.77
21360	C		Treat cheek bone fracture					
21365	C		Treat cheek bone fracture					
21366	C		Treat cheek bone fracture					
21385	C		Treat eye socket fracture					
21386	C		Treat eye socket fracture					
21387	C		Treat eye socket fracture					
21390	T		Treat eye socket fracture	0256	37.3204	$2,214.70		$442.94
21395	C		Treat eye socket fracture					
21400	T		Treat eye socket fracture	0252	7.8673	$466.87	$113.41	$93.37
21401	T		Treat eye socket fracture	0253	16.1357	$957.54	$282.29	$191.51
21406	T		Treat eye socket fracture	0256	37.3204	$2,214.70		$442.94
21407	T		Treat eye socket fracture	0256	37.3204	$2,214.70		$442.94
21408	T		Treat eye socket fracture	0256	37.3204	$2,214.70		$442.94
21421	T		Treat mouth roof fracture	0254	23.404	$1,388.86	$321.35	$277.77
21422	C		Treat mouth roof fracture					
21423	C		Treat mouth roof fracture					
21431	C		Treat craniofacial fracture					
21432	C		Treat craniofacial fracture					
21433	C		Treat craniofacial fracture					
21435	C		Treat craniofacial fracture					
21436	C		Treat craniofacial fracture					
21440	T		Treat dental ridge fracture	0254	23.404	$1,388.86	$321.35	$277.77
21445	T		Treat dental ridge fracture	0254	23.404	$1,388.86	$321.35	$277.77
21450	T		Treat lower jaw fracture	0251	2.0101	$119.29		$23.86
21451	T		Treat lower jaw fracture	0252	7.8673	$466.87	$113.41	$93.37
21452	T		Treat lower jaw fracture	0253	16.1357	$957.54	$282.29	$191.51
21453	T		Treat lower jaw fracture	0256	37.3204	$2,214.70		$442.94
21454	T		Treat lower jaw fracture	0254	23.404	$1,388.86	$321.35	$277.77
21461	T		Treat lower jaw fracture	0256	37.3204	$2,214.70		$442.94
21462	T		Treat lower jaw fracture	0256	37.3204	$2,214.70		$442.94
21465	T		Treat lower jaw fracture	0256	37.3204	$2,214.70		$442.94
21470	T		Treat lower jaw fracture	0256	37.3204	$2,214.70		$442.94
21480	T		Reset dislocated jaw	0251	2.0101	$119.29		$23.86
21485	T		Reset dislocated jaw	0253	16.1357	$957.54	$282.29	$191.51
21490	T		Repair dislocated jaw	0256	37.3204	$2,214.70		$442.94
21493	T		Treat hyoid bone fracture	0252	7.8673	$466.87	$113.41	$93.37
21494	T		Treat hyoid bone fracture	0252	7.8673	$466.87	$113.41	$93.37
21495	T		Treat hyoid bone fracture	0253	16.1357	$957.54	$282.29	$191.51
21497	T		Interdental wiring	0253	16.1357	$957.54	$282.29	$191.51
21499	T		Head surgery procedure	0251	2.0101	$119.29		$23.86
21501	T		Drain neck/chest lesion	0008	16.4989	$979.09		$195.82
21502	T		Drain chest lesion	0049	20.3707	$1,208.86		$241.77
21510	C		Drainage of bone lesion					
21550	T		Biopsy of neck/chest	0021	14.9776	$888.82	$219.48	$177.76
21555	T		Remove lesion, neck/chest	0022	19.6472	$1,165.92	$354.45	$233.18
21556	T		Remove lesion, neck/chest	0022	19.6472	$1,165.92	$354.45	$233.18
21557	T		Remove tumor, neck/chest	0022	19.6472	$1,165.92	$354.45	$233.18
21600	T		Partial removal of rib	0050	23.9081	$1,418.78		$283.76
21610	T		Partial removal of rib	0050	23.9081	$1,418.78		$283.76
21615	C		Removal of rib					
21616	C		Removal of rib and nerves					
21620	C		Partial removal of sternum					
21627	C		Sternal debridement					
21630	C		Extensive sternum surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21632	C		Extensive sternum surgery					
21685	T		Hyoid myotomy & suspension	0252	7.8673	$466.87	$113.41	$93.37
21700	T		Revision of neck muscle	0049	20.3707	$1,208.86		$241.77
21705	C		Revision of neck muscle/rib					
21720	T		Revision of neck muscle	0049	20.3707	$1,208.86		$241.77
21725	T		Revision of neck muscle	0006	1.55	$91.98	$22.28	$18.40
21740	C		Reconstruction of sternum					
21742	T		Repair stern/nuss w/o scope	0051	36.5271	$2,167.63		$433.53
21743	T		Repair sternum/nuss w/scope	0051	36.5271	$2,167.63		$433.53
21750	C		Repair of sternum separation					
21800	T		Treatment of rib fracture	0043	1.7694	$105.00		$21.00
21805	T		Treatment of rib fracture	0046	37.7023	$2,237.37	$535.76	$447.47
21810	C		Treatment of rib fracture(s)					
21820	T		Treat sternum fracture	0043	1.7694	$105.00		$21.00
21825	C		Treat sternum fracture					
21899	T		Neck/chest surgery procedure	0251	2.0101	$119.29		$23.86
21920	T		Biopsy soft tissue of back	0020	6.9433	$412.04	$107.40	$82.41
21925	T		Biopsy soft tissue of back	0022	19.6472	$1,165.92	$354.45	$233.18
21930	T		Remove lesion, back or flank	0022	19.6472	$1,165.92	$354.45	$233.18
21935	T		Remove tumor, back	0022	19.6472	$1,165.92	$354.45	$233.18
22100	T		Remove part of neck vertebra	0208	42.3409	$2,512.64		$502.53
22101	T		Remove part, thorax vertebra	0208	42.3409	$2,512.64		$502.53
22102	T		Remove part, lumbar vertebra	0208	42.3409	$2,512.64		$502.53
22103	T		Remove extra spine segment	0208	42.3409	$2,512.64		$502.53
22110	C		Remove part of neck vertebra					
22112	C		Remove part, thorax vertebra					
22114	C		Remove part, lumbar vertebra					
22116	C		Remove extra spine segment					
22210	C		Revision of neck spine					
22212	C		Revision of thorax spine					
22214	C		Revision of lumbar spine					
22216	C		Revise, extra spine segment					
22220	C		Revision of neck spine					
22222	T		Revision of thorax spine	0208	42.3409	$2,512.64		$502.53
22224	C		Revision of lumbar spine					
22226	C		Revise, extra spine segment					
22305	T		Treat spine process fracture	0043	1.7694	$105.00		$21.00
22310	T		Treat spine fracture	0043	1.7694	$105.00		$21.00
22315	T		Treat spine fracture	0043	1.7694	$105.00		$21.00
22318	C		Treat odontoid fx w/o graft					
22319	C		Treat odontoid fx w/graft					
22325	C		Treat spine fracture					
22326	C		Treat neck spine fracture					
22327	C		Treat thorax spine fracture					
22328	C		Treat each add spine fx					
22505	T		Manipulation of spine	0045	14.4945	$860.15	$268.47	$172.03
22520	T		Percut vertebroplasty thor	0050	23.9081	$1,418.78		$283.76
22521	T		Percut vertebroplasty lumb	0050	23.9081	$1,418.78		$283.76
22522	T		Percut vertebroplasty add'l	0050	23.9081	$1,418.78		$283.76
22532	C		Lat thorax spine fusion					
22533	C		Lat lumbar spine fusion					
22534	C		Lat thor/lumb, add'l seg					
22548	C		Neck spine fusion					
22554	C		Neck spine fusion					
22556	C		Thorax spine fusion					
22558	C		Lumbar spine fusion					
22585	C		Additional spinal fusion					
22590	C		Spine & skull spinal fusion					
22595	C		Neck spinal fusion					
22600	C		Neck spine fusion					
22610	C		Thorax spine fusion					
22612	T		Lumbar spine fusion	0208	42.3409	$2,512.64		$502.53
22614	T		Spine fusion, extra segment	0208	42.3409	$2,512.64		$502.53
22630	C		Lumbar spine fusion					
22632	C		Spine fusion, extra segment					
22800	C		Fusion of spine					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
22802	C		Fusion of spine					
22804	C		Fusion of spine					
22808	C		Fusion of spine					
22810	C		Fusion of spine					
22812	C		Fusion of spine					
22818	C		Kyphectomy, 1-2 segments					
22819	C		Kyphectomy, 3 or more					
22830	C		Exploration of spinal fusion					
22840	C		Insert spine fixation device					
22841	C		Insert spine fixation device					
22842	C		Insert spine fixation device					
22843	C		Insert spine fixation device					
22844	C		Insert spine fixation device					
22845	C		Insert spine fixation device					
22846	C		Insert spine fixation device					
22847	C		Insert spine fixation device					
22848	C		Insert pelv fixation device					
22849	C		Reinsert spinal fixation					
22850	C		Remove spine fixation device					
22851	C		Apply spine prosth device					
22852	C		Remove spine fixation device					
22855	C		Remove spine fixation device					
22899	T		Spine surgery procedure	0043	1.7694	$105.00		$21.00
22900	T		Remove abdominal wall lesion	0022	19.6472	$1,165.92	$354.45	$233.18
22999	T		Abdomen surgery procedure	0019	4.0547	$240.62	$71.87	$48.12
23000	T		Removal of calcium deposits	0021	14.9776	$888.82	$219.48	$177.76
23020	T		Release shoulder joint	0051	36.5271	$2,167.63		$433.53
23030	T		Drain shoulder lesion	0008	16.4989	$979.09		$195.82
23031	T		Drain shoulder bursa	0008	16.4989	$979.09		$195.82
23035	T		Drain shoulder bone lesion	0049	20.3707	$1,208.86		$241.77
23040	T		Exploratory shoulder surgery	0050	23.9081	$1,418.78		$283.76
23044	T		Exploratory shoulder surgery	0050	23.9081	$1,418.78		$283.76
23065	T		Biopsy shoulder tissues	0021	14.9776	$888.82	$219.48	$177.76
23066	T		Biopsy shoulder tissues	0022	19.6472	$1,165.92	$354.45	$233.18
23075	T		Removal of shoulder lesion	0021	14.9776	$888.82	$219.48	$177.76
23076	T		Removal of shoulder lesion	0022	19.6472	$1,165.92	$354.45	$233.18
23077	T		Remove tumor of shoulder	0022	19.6472	$1,165.92	$354.45	$233.18
23100	T		Biopsy of shoulder joint	0049	20.3707	$1,208.86		$241.77
23101	T		Shoulder joint surgery	0050	23.9081	$1,418.78		$283.76
23105	T		Remove shoulder joint lining	0050	23.9081	$1,418.78		$283.76
23106	T		Incision of collarbone joint	0050	23.9081	$1,418.78		$283.76
23107	T		Explore treat shoulder joint	0050	23.9081	$1,418.78		$283.76
23120	T		Partial removal, collar bone	0051	36.5271	$2,167.63		$433.53
23125	T		Removal of collar bone	0051	36.5271	$2,167.63		$433.53
23130	T		Remove shoulder bone, part	0051	36.5271	$2,167.63		$433.53
23140	T		Removal of bone lesion	0049	20.3707	$1,208.86		$241.77
23145	T		Removal of bone lesion	0050	23.9081	$1,418.78		$283.76
23146	T		Removal of bone lesion	0050	23.9081	$1,418.78		$283.76
23150	T		Removal of humerus lesion	0050	23.9081	$1,418.78		$283.76
23155	T		Removal of humerus lesion	0050	23.9081	$1,418.78		$283.76
23156	T		Removal of humerus lesion	0050	23.9081	$1,418.78		$283.76
23170	T		Remove collar bone lesion	0050	23.9081	$1,418.78		$283.76
23172	T		Remove shoulder blade lesion	0050	23.9081	$1,418.78		$283.76
23174	T		Remove humerus lesion	0050	23.9081	$1,418.78		$283.76
23180	T		Remove collar bone lesion	0050	23.9081	$1,418.78		$283.76
23182	T		Remove shoulder blade lesion	0050	23.9081	$1,418.78		$283.76
23184	T		Remove humerus lesion	0050	23.9081	$1,418.78		$283.76
23190	T		Partial removal of scapula	0050	23.9081	$1,418.78		$283.76
23195	T		Removal of head of humerus	0050	23.9081	$1,418.78		$283.76
23200	C		Removal of collar bone					
23210	C		Removal of shoulder blade					
23220	C		Partial removal of humerus					
23221	C		Partial removal of humerus					
23222	C		Partial removal of humerus					
23330	T		Remove shoulder foreign body	0020	6.9433	$412.04	$107.40	$82.41
23331	T		Remove shoulder foreign body	0022	19.6472	$1,165.92	$354.45	$233.18

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
23332	C		Remove shoulder foreign body					
23350	N		Injection for shoulder x-ray					
23395	T		Muscle transfer,shoulder/arm	0051	36.5271	$2,167.63		$433.53
23397	T		Muscle transfers	0052	43.9378	$2,607.40		$521.48
23400	T		Fixation of shoulder blade	0050	23.9081	$1,418.78		$283.76
23405	T		Incision of tendon & muscle	0050	23.9081	$1,418.78		$283.76
23406	T		Incise tendon(s) & muscle(s)	0050	23.9081	$1,418.78		$283.76
23410	T		Repair of tendon(s)	0052	43.9378	$2,607.40		$521.48
23412	T		Repair rotator cuff, chronic	0052	43.9378	$2,607.40		$521.48
23415	T		Release of shoulder ligament	0051	36.5271	$2,167.63		$433.53
23420	T		Repair of shoulder	0052	43.9378	$2,607.40		$521.48
23430	T		Repair biceps tendon	0052	43.9378	$2,607.40		$521.48
23440	T		Remove/transplant tendon	0052	43.9378	$2,607.40		$521.48
23450	T		Repair shoulder capsule	0052	43.9378	$2,607.40		$521.48
23455	T		Repair shoulder capsule	0052	43.9378	$2,607.40		$521.48
23460	T		Repair shoulder capsule	0052	43.9378	$2,607.40		$521.48
23462	T		Repair shoulder capsule	0052	43.9378	$2,607.40		$521.48
23465	T		Repair shoulder capsule	0052	43.9378	$2,607.40		$521.48
23466	T		Repair shoulder capsule	0052	43.9378	$2,607.40		$521.48
23470	T		Reconstruct shoulder joint	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
23472	C		Reconstruct shoulder joint					
23480	T		Revision of collar bone	0051	36.5271	$2,167.63		$433.53
23485	T		Revision of collar bone	0051	36.5271	$2,167.63		$433.53
23490	T		Reinforce clavicle	0051	36.5271	$2,167.63		$433.53
23491	T		Reinforce shoulder bones	0051	36.5271	$2,167.63		$433.53
23500	T		Treat clavicle fracture	0043	1.7694	$105.00		$21.00
23505	T		Treat clavicle fracture	0043	1.7694	$105.00		$21.00
23515	T		Treat clavicle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23520	T		Treat clavicle dislocation	0043	1.7694	$105.00		$21.00
23525	T		Treat clavicle dislocation	0043	1.7694	$105.00		$21.00
23530	T		Treat clavicle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
23532	T		Treat clavicle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
23540	T		Treat clavicle dislocation	0043	1.7694	$105.00		$21.00
23545	T		Treat clavicle dislocation	0043	1.7694	$105.00		$21.00
23550	T		Treat clavicle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
23552	T		Treat clavicle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
23570	T		Treat shoulder blade fx	0043	1.7694	$105.00		$21.00
23575	T		Treat shoulder blade fx	0043	1.7694	$105.00		$21.00
23585	T		Treat scapula fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23600	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
23605	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
23615	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23616	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23620	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
23625	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
23630	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23650	T		Treat shoulder dislocation	0043	1.7694	$105.00		$21.00
23655	T		Treat shoulder dislocation	0045	14.4945	$860.15	$268.47	$172.03
23660	T		Treat shoulder dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
23665	T		Treat dislocation/fracture	0043	1.7694	$105.00		$21.00
23670	T		Treat dislocation/fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23675	T		Treat dislocation/fracture	0043	1.7694	$105.00		$21.00
23680	T		Treat dislocation/fracture	0046	37.7023	$2,237.37	$535.76	$447.47
23700	T		Fixation of shoulder	0045	14.4945	$860.15	$268.47	$172.03
23800	T		Fusion of shoulder joint	0051	36.5271	$2,167.63		$433.53
23802	T		Fusion of shoulder joint	0051	36.5271	$2,167.63		$433.53
23900	C		Amputation of arm & girdle					
23920	C		Amputation at shoulder joint					
23921	T		Amputation follow-up surgery	0025	5.4938	$326.02	$101.85	$65.20
23929	T		Shoulder surgery procedure	0043	1.7694	$105.00		$21.00
23930	T		Drainage of arm lesion	0008	16.4989	$979.09		$195.82
23931	T		Drainage of arm bursa	0008	16.4989	$979.09		$195.82
23935	T		Drain arm/elbow bone lesion	0049	20.3707	$1,208.86		$241.77
24000	T		Exploratory elbow surgery	0050	23.9081	$1,418.78		$283.76
24006	T		Release elbow joint	0050	23.9081	$1,418.78		$283.76
24065	T		Biopsy arm/elbow soft tissue	0021	14.9776	$888.82	$219.48	$177.76

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
24066	T		Biopsy arm/elbow soft tissue	0021	14.9776	$888.82	$219.48	$177.76
24075	T		Remove arm/elbow lesion	0021	14.9776	$888.82	$219.48	$177.76
24076	T		Remove arm/elbow lesion	0022	19.6472	$1,165.92	$354.45	$233.18
24077	T		Remove tumor of arm/elbow	0022	19.6472	$1,165.92	$354.45	$233.18
24100	T		Biopsy elbow joint lining	0049	20.3707	$1,208.86		$241.77
24101	T		Explore/treat elbow joint	0050	23.9081	$1,418.78		$283.76
24102	T		Remove elbow joint lining	0050	23.9081	$1,418.78		$283.76
24105	T		Removal of elbow bursa	0049	20.3707	$1,208.86		$241.77
24110	T		Remove humerus lesion	0049	20.3707	$1,208.86		$241.77
24115	T		Remove/graft bone lesion	0050	23.9081	$1,418.78		$283.76
24116	T		Remove/graft bone lesion	0050	23.9081	$1,418.78		$283.76
24120	T		Remove elbow lesion	0049	20.3707	$1,208.86		$241.77
24125	T		Remove/graft bone lesion	0050	23.9081	$1,418.78		$283.76
24126	T		Remove/graft bone lesion	0050	23.9081	$1,418.78		$283.76
24130	T		Removal of head of radius	0050	23.9081	$1,418.78		$283.76
24134	T		Removal of arm bone lesion	0050	23.9081	$1,418.78		$283.76
24136	T		Remove radius bone lesion	0050	23.9081	$1,418.78		$283.76
24138	T		Remove elbow bone lesion	0050	23.9081	$1,418.78		$283.76
24140	T		Partial removal of arm bone	0050	23.9081	$1,418.78		$283.76
24145	T		Partial removal of radius	0050	23.9081	$1,418.78		$283.76
24147	T		Partial removal of elbow	0050	23.9081	$1,418.78		$283.76
24149	T		Radical resection of elbow	0050	23.9081	$1,418.78		$283.76
24150	T		Extensive humerus surgery	0052	43.9378	$2,607.40		$521.48
24151	T		Extensive humerus surgery	0052	43.9378	$2,607.40		$521.48
24152	T		Extensive radius surgery	0052	43.9378	$2,607.40		$521.48
24153	T		Extensive radius surgery	0052	43.9378	$2,607.40		$521.48
24155	T		Removal of elbow joint	0051	36.5271	$2,167.63		$433.53
24160	T		Remove elbow joint implant	0050	23.9081	$1,418.78		$283.76
24164	T		Remove radius head implant	0050	23.9081	$1,418.78		$283.76
24200	T		Removal of arm foreign body	0019	4.0547	$240.62	$71.87	$48.12
24201	T		Removal of arm foreign body	0021	14.9776	$888.82	$219.48	$177.76
24220	N		Injection for elbow x-ray					
24300	T		Manipulate elbow w/anesth	0045	14.4945	$860.15	$268.47	$172.03
24301	T		Muscle/tendon transfer	0050	23.9081	$1,418.78		$283.76
24305	T		Arm tendon lengthening	0050	23.9081	$1,418.78		$283.76
24310	T		Revision of arm tendon	0049	20.3707	$1,208.86		$241.77
24320	T		Repair of arm tendon	0051	36.5271	$2,167.63		$433.53
24330	T		Revision of arm muscles	0051	36.5271	$2,167.63		$433.53
24331	T		Revision of arm muscles	0051	36.5271	$2,167.63		$433.53
24332	T		Tenolysis, triceps	0049	20.3707	$1,208.86		$241.77
24340	T		Repair of biceps tendon	0051	36.5271	$2,167.63		$433.53
24341	T		Repair arm tendon/muscle	0051	36.5271	$2,167.63		$433.53
24342	T		Repair of ruptured tendon	0051	36.5271	$2,167.63		$433.53
24343	T		Repr elbow lat ligmnt w/tiss	0050	23.9081	$1,418.78		$283.76
24344	T		Reconstruct elbow lat ligmnt	0051	36.5271	$2,167.63		$433.53
24345	T		Repr elbw med ligmnt w/tissu	0050	23.9081	$1,418.78		$283.76
24346	T		Reconstruct elbow med ligmnt	0051	36.5271	$2,167.63		$433.53
24350	T		Repair of tennis elbow	0050	23.9081	$1,418.78		$283.76
24351	T		Repair of tennis elbow	0050	23.9081	$1,418.78		$283.76
24352	T		Repair of tennis elbow	0050	23.9081	$1,418.78		$283.76
24354	T		Repair of tennis elbow	0050	23.9081	$1,418.78		$283.76
24356	T		Revision of tennis elbow	0050	23.9081	$1,418.78		$283.76
24360	T		Reconstruct elbow joint	0047	31.6107	$1,875.87	$537.03	$375.17
24361	T		Reconstruct elbow joint	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
24362	T		Reconstruct elbow joint	0048	43.1288	$2,559.39	$570.30	$511.88
24363	T		Replace elbow joint	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
24365	T		Reconstruct head of radius	0047	31.6107	$1,875.87	$537.03	$375.17
24366	T		Reconstruct head of radius	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
24400	T		Revision of humerus	0050	23.9081	$1,418.78		$283.76
24410	T		Revision of humerus	0050	23.9081	$1,418.78		$283.76
24420	T		Revision of humerus	0051	36.5271	$2,167.63		$433.53
24430	T		Repair of humerus	0051	36.5271	$2,167.63		$433.53
24435	T		Repair humerus with graft	0051	36.5271	$2,167.63		$433.53
24470	T		Revision of elbow joint	0051	36.5271	$2,167.63		$433.53
24495	T		Decompression of forearm	0050	23.9081	$1,418.78		$283.76
24498	T		Reinforce humerus	0051	36.5271	$2,167.63		$433.53

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
24500	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24505	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24515	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24516	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24530	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24535	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24538	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24545	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24546	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24560	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24565	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24566	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24575	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24576	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24577	T		Treat humerus fracture	0043	1.7694	$105.00		$21.00
24579	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24582	T		Treat humerus fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24586	T		Treat elbow fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24587	T		Treat elbow fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24600	T		Treat elbow dislocation	0043	1.7694	$105.00		$21.00
24605	T		Treat elbow dislocation	0045	14.4945	$860.15	$268.47	$172.03
24615	T		Treat elbow dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
24620	T		Treat elbow fracture	0043	1.7694	$105.00		$21.00
24635	T		Treat elbow fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24640	T		Treat elbow dislocation	0043	1.7694	$105.00		$21.00
24650	T		Treat radius fracture	0043	1.7694	$105.00		$21.00
24655	T		Treat radius fracture	0043	1.7694	$105.00		$21.00
24665	T		Treat radius fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24666	T		Treat radius fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24670	T		Treat ulnar fracture	0043	1.7694	$105.00		$21.00
24675	T		Treat ulnar fracture	0043	1.7694	$105.00		$21.00
24685	T		Treat ulnar fracture	0046	37.7023	$2,237.37	$535.76	$447.47
24800	T		Fusion of elbow joint	0051	36.5271	$2,167.63		$433.53
24802	T		Fusion/graft of elbow joint	0051	36.5271	$2,167.63		$433.53
24900	C		Amputation of upper arm					
24920	C		Amputation of upper arm					
24925	T		Amputation follow-up surgery	0049	20.3707	$1,208.86		$241.77
24930	C		Amputation follow-up surgery					
24931	C		Amputate upper arm & implant					
24935	T		Revision of amputation	0052	43.9378	$2,607.40		$521.48
24940	C		Revision of upper arm					
24999	T		Upper arm/elbow surgery	0043	1.7694	$105.00		$21.00
25000	T		Incision of tendon sheath	0049	20.3707	$1,208.86		$241.77
25001	T		Incise flexor carpi radialis	0049	20.3707	$1,208.86		$241.77
25020	T		Decompress forearm 1 space	0049	20.3707	$1,208.86		$241.77
25023	T		Decompress forearm 1 space	0050	23.9081	$1,418.78		$283.76
25024	T		Decompress forearm 2 spaces	0050	23.9081	$1,418.78		$283.76
25025	T		Decompress forearm 2 spaces	0050	23.9081	$1,418.78		$283.76
25028	T		Drainage of forearm lesion	0049	20.3707	$1,208.86		$241.77
25031	T		Drainage of forearm bursa	0049	20.3707	$1,208.86		$241.77
25035	T		Treat forearm bone lesion	0049	20.3707	$1,208.86		$241.77
25040	T		Explore/treat wrist joint	0050	23.9081	$1,418.78		$283.76
25065	T		Biopsy forearm soft tissues	0021	14.9776	$888.82	$219.48	$177.76
25066	T		Biopsy forearm soft tissues	0022	19.6472	$1,165.92	$354.45	$233.18
25075	T		Removel forearm lesion subcu	0021	14.9776	$888.82	$219.48	$177.76
25076	T		Removel forearm lesion deep	0022	19.6472	$1,165.92	$354.45	$233.18
25077	T		Remove tumor, forearm/wrist	0022	19.6472	$1,165.92	$354.45	$233.18
25085	T		Incision of wrist capsule	0049	20.3707	$1,208.86		$241.77
25100	T		Biopsy of wrist joint	0049	20.3707	$1,208.86		$241.77
25101	T		Explore/treat wrist joint	0050	23.9081	$1,418.78		$283.76
25105	T		Remove wrist joint lining	0050	23.9081	$1,418.78		$283.76
25107	T		Remove wrist joint cartilage	0050	23.9081	$1,418.78		$283.76
25110	T		Remove wrist tendon lesion	0049	20.3707	$1,208.86		$241.77
25111	T		Remove wrist tendon lesion	0053	15.6795	$930.47	$253.49	$186.09
25112	T		Reremove wrist tendon lesion	0053	15.6795	$930.47	$253.49	$186.09
25115	T		Remove wrist/forearm lesion	0049	20.3707	$1,208.86		$241.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25116	T		Remove wrist/forearm lesion	0049	20.3707	$1,208.86		$241.77
25118	T		Excise wrist tendon sheath	0050	23.9081	$1,418.78		$283.76
25119	T		Partial removal of ulna	0050	23.9081	$1,418.78		$283.76
25120	T		Removal of forearm lesion	0050	23.9081	$1,418.78		$283.76
25125	T		Remove/graft forearm lesion	0050	23.9081	$1,418.78		$283.76
25126	T		Remove/graft forearm lesion	0050	23.9081	$1,418.78		$283.76
25130	T		Removal of wrist lesion	0050	23.9081	$1,418.78		$283.76
25135	T		Remove & graft wrist lesion	0050	23.9081	$1,418.78		$283.76
25136	T		Remove & graft wrist lesion	0050	23.9081	$1,418.78		$283.76
25145	T		Remove forearm bone lesion	0050	23.9081	$1,418.78		$283.76
25150	T		Partial removal of ulna	0050	23.9081	$1,418.78		$283.76
25151	T		Partial removal of radius	0050	23.9081	$1,418.78		$283.76
25170	T		Extensive forearm surgery	0052	43.9378	$2,607.40		$521.48
25210	T		Removal of wrist bone	0054	25.3711	$1,505.60		$301.12
25215	T		Removal of wrist bones	0054	25.3711	$1,505.60		$301.12
25230	T		Partial removal of radius	0050	23.9081	$1,418.78		$283.76
25240	T		Partial removal of ulna	0050	23.9081	$1,418.78		$283.76
25246	N		Injection for wrist x-ray					
25248	T		Remove forearm foreign body	0049	20.3707	$1,208.86		$241.77
25250	T		Removal of wrist prosthesis	0050	23.9081	$1,418.78		$283.76
25251	T		Removal of wrist prosthesis	0050	23.9081	$1,418.78		$283.76
25259	T		Manipulate wrist w/anesthes	0043	1.7694	$105.00		$21.00
25260	T		Repair forearm tendon/muscle	0050	23.9081	$1,418.78		$283.76
25263	T		Repair forearm tendon/muscle	0050	23.9081	$1,418.78		$283.76
25265	T		Repair forearm tendon/muscle	0050	23.9081	$1,418.78		$283.76
25270	T		Repair forearm tendon/muscle	0050	23.9081	$1,418.78		$283.76
25272	T		Repair forearm tendon/muscle	0050	23.9081	$1,418.78		$283.76
25274	T		Repair forearm tendon/muscle	0050	23.9081	$1,418.78		$283.76
25275	T		Repair forearm tendon sheath	0050	23.9081	$1,418.78		$283.76
25280	T		Revise wrist/forearm tendon	0050	23.9081	$1,418.78		$283.76
25290	T		Incise wrist/forearm tendon	0050	23.9081	$1,418.78		$283.76
25295	T		Release wrist/forearm tendon	0049	20.3707	$1,208.86		$241.77
25300	T		Fusion of tendons at wrist	0050	23.9081	$1,418.78		$283.76
25301	T		Fusion of tendons at wrist	0050	23.9081	$1,418.78		$283.76
25310	T		Transplant forearm tendon	0051	36.5271	$2,167.63		$433.53
25312	T		Transplant forearm tendon	0051	36.5271	$2,167.63		$433.53
25315	T		Revise palsy hand tendon(s)	0051	36.5271	$2,167.63		$433.53
25316	T		Revise palsy hand tendon(s)	0051	36.5271	$2,167.63		$433.53
25320	T		Repair/revise wrist joint	0051	36.5271	$2,167.63		$433.53
25332	T		Revise wrist joint	0047	31.6107	$1,875.87	$537.03	$375.17
25335	T		Realignment of hand	0051	36.5271	$2,167.63		$433.53
25337	T		Reconstruct ulna/radioulnar	0051	36.5271	$2,167.63		$433.53
25350	T		Revision of radius	0051	36.5271	$2,167.63		$433.53
25355	T		Revision of radius	0051	36.5271	$2,167.63		$433.53
25360	T		Revision of ulna	0050	23.9081	$1,418.78		$283.76
25365	T		Revise radius & ulna	0050	23.9081	$1,418.78		$283.76
25370	T		Revise radius or ulna	0051	36.5271	$2,167.63		$433.53
25375	T		Revise radius & ulna	0051	36.5271	$2,167.63		$433.53
25390	T		Shorten radius or ulna	0050	23.9081	$1,418.78		$283.76
25391	T		Lengthen radius or ulna	0051	36.5271	$2,167.63		$433.53
25392	T		Shorten radius & ulna	0050	23.9081	$1,418.78		$283.76
25393	T		Lengthen radius & ulna	0051	36.5271	$2,167.63		$433.53
25394	T		Repair carpal bone, shorten	0053	15.6795	$930.47	$253.49	$186.09
25400	T		Repair radius or ulna	0050	23.9081	$1,418.78		$283.76
25405	T		Repair/graft radius or ulna	0050	23.9081	$1,418.78		$283.76
25415	T		Repair radius & ulna	0050	23.9081	$1,418.78		$283.76
25420	T		Repair/graft radius & ulna	0051	36.5271	$2,167.63		$433.53
25425	T		Repair/graft radius or ulna	0051	36.5271	$2,167.63		$433.53
25426	T		Repair/graft radius & ulna	0051	36.5271	$2,167.63		$433.53
25430	T		Vasc graft into carpal bone	0054	25.3711	$1,505.60		$301.12
25431	T		Repair nonunion carpal bone	0054	25.3711	$1,505.60		$301.12
25440	T		Repair/graft wrist bone	0051	36.5271	$2,167.63		$433.53
25441	T		Reconstruct wrist joint	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
25442	T		Reconstruct wrist joint	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
25443	T		Reconstruct wrist joint	0048	43.1288	$2,559.39	$570.30	$511.88
25444	T		Reconstruct wrist joint	0048	43.1288	$2,559.39	$570.30	$511.88

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25445	T		Reconstruct wrist joint	0048	43.1288	$2,559.39	$570.30	$511.88
25446	T		Wrist replacement	0425	100.2058	$5,946.51	$1,378.01	$1,189.30
25447	T		Repair wrist joint(s)	0047	31.6107	$1,875.87	$537.03	$375.17
25449	T		Remove wrist joint implant	0047	31.6107	$1,875.87	$537.03	$375.17
25450	T		Revision of wrist joint	0051	36.5271	$2,167.63		$433.53
25455	T		Revision of wrist joint	0051	36.5271	$2,167.63		$433.53
25490	T		Reinforce radius	0051	36.5271	$2,167.63		$433.53
25491	T		Reinforce ulna	0051	36.5271	$2,167.63		$433.53
25492	T		Reinforce radius and ulna	0051	36.5271	$2,167.63		$433.53
25500	T		Treat fracture of radius	0043	1.7694	$105.00		$21.00
25505	T		Treat fracture of radius	0043	1.7694	$105.00		$21.00
25515	T		Treat fracture of radius	0046	37.7023	$2,237.37	$535.76	$447.47
25520	T		Treat fracture of radius	0043	1.7694	$105.00		$21.00
25525	T		Treat fracture of radius	0046	37.7023	$2,237.37	$535.76	$447.47
25526	T		Treat fracture of radius	0046	37.7023	$2,237.37	$535.76	$447.47
25530	T		Treat fracture of ulna	0043	1.7694	$105.00		$21.00
25535	T		Treat fracture of ulna	0043	1.7694	$105.00		$21.00
25545	T		Treat fracture of ulna	0046	37.7023	$2,237.37	$535.76	$447.47
25560	T		Treat fracture radius & ulna	0043	1.7694	$105.00		$21.00
25565	T		Treat fracture radius & ulna	0043	1.7694	$105.00		$21.00
25574	T		Treat fracture radius & ulna	0046	37.7023	$2,237.37	$535.76	$447.47
25575	T		Treat fracture radius/ulna	0046	37.7023	$2,237.37	$535.76	$447.47
25600	T		Treat fracture radius/ulna	0043	1.7694	$105.00		$21.00
25605	T		Treat fracture radius/ulna	0043	1.7694	$105.00		$21.00
25611	T		Treat fracture radius/ulna	0046	37.7023	$2,237.37	$535.76	$447.47
25620	T		Treat fracture radius/ulna	0046	37.7023	$2,237.37	$535.76	$447.47
25622	T		Treat wrist bone fracture	0043	1.7694	$105.00		$21.00
25624	T		Treat wrist bone fracture	0043	1.7694	$105.00		$21.00
25628	T		Treat wrist bone fracture	0046	37.7023	$2,237.37	$535.76	$447.47
25630	T		Treat wrist bone fracture	0043	1.7694	$105.00		$21.00
25635	T		Treat wrist bone fracture	0043	1.7694	$105.00		$21.00
25645	T		Treat wrist bone fracture	0046	37.7023	$2,237.37	$535.76	$447.47
25650	T		Treat wrist bone fracture	0043	1.7694	$105.00		$21.00
25651	T		Pin ulnar styloid fracture	0046	37.7023	$2,237.37	$535.76	$447.47
25652	T		Treat fracture ulnar styloid	0046	37.7023	$2,237.37	$535.76	$447.47
25660	T		Treat wrist dislocation	0043	1.7694	$105.00		$21.00
25670	T		Treat wrist dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
25671	T		Pin radioulnar dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
25675	T		Treat wrist dislocation	0043	1.7694	$105.00		$21.00
25676	T		Treat wrist dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
25680	T		Treat wrist fracture	0043	1.7694	$105.00		$21.00
25685	T		Treat wrist fracture	0046	37.7023	$2,237.37	$535.76	$447.47
25690	T		Treat wrist dislocation	0043	1.7694	$105.00		$21.00
25695	T		Treat wrist dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
25800	T		Fusion of wrist joint	0051	36.5271	$2,167.63		$433.53
25805	T		Fusion/graft of wrist joint	0051	36.5271	$2,167.63		$433.53
25810	T		Fusion/graft of wrist joint	0051	36.5271	$2,167.63		$433.53
25820	T		Fusion of hand bones	0053	15.6795	$930.47	$253.49	$186.09
25825	T		Fuse hand bones with graft	0054	25.3711	$1,505.60		$301.12
25830	T		Fusion, radioulnar jnt/ulna	0051	36.5271	$2,167.63		$433.53
25900	C		Amputation of forearm					
25905	C		Amputation of forearm					
25907	T		Amputation follow-up surgery	0049	20.3707	$1,208.86		$241.77
25909	C		Amputation follow-up surgery					
25915	C		Amputation of forearm					
25920	C		Amputate hand at wrist					
25922	T		Amputate hand at wrist	0049	20.3707	$1,208.86		$241.77
25924	C		Amputation follow-up surgery					
25927	C		Amputation of hand					
25929	T		Amputation follow-up surgery	0686	13.8287	$820.64		$164.13
25931	C		Amputation follow-up surgery					
25999	T		Forearm or wrist surgery	0043	1.7694	$105.00		$21.00
26010	T		Drainage of finger abscess	0006	1.55	$91.98	$22.28	$18.40
26011	T		Drainage of finger abscess	0007	11.4501	$679.48		$135.90
26020	T		Drain hand tendon sheath	0053	15.6795	$930.47	$253.49	$186.09
26025	T		Drainage of palm bursa	0053	15.6795	$930.47	$253.49	$186.09

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26030	T		Drainage of palm bursa(s)	0053	15.6795	$930.47	$253.49	$186.09
26034	T		Treat hand bone lesion	0053	15.6795	$930.47	$253.49	$186.09
26035	T		Decompress fingers/hand	0053	15.6795	$930.47	$253.49	$186.09
26037	T		Decompress fingers/hand	0053	15.6795	$930.47	$253.49	$186.09
26040	T		Release palm contracture	0054	25.3711	$1,505.60		$301.12
26045	T		Release palm contracture	0054	25.3711	$1,505.60		$301.12
26055	T		Incise finger tendon sheath	0053	15.6795	$930.47	$253.49	$186.09
26060	T		Incision of finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26070	T		Explore/treat hand joint	0053	15.6795	$930.47	$253.49	$186.09
26075	T		Explore/treat finger joint	0053	15.6795	$930.47	$253.49	$186.09
26080	T		Explore/treat finger joint	0053	15.6795	$930.47	$253.49	$186.09
26100	T		Biopsy hand joint lining	0053	15.6795	$930.47	$253.49	$186.09
26105	T		Biopsy finger joint lining	0053	15.6795	$930.47	$253.49	$186.09
26110	T		Biopsy finger joint lining	0053	15.6795	$930.47	$253.49	$186.09
26115	T		Removel hand lesion subcut	0022	19.6472	$1,165.92	$354.45	$233.18
26116	T		Removel hand lesion, deep	0022	19.6472	$1,165.92	$354.45	$233.18
26117	T		Remove tumor, hand/finger	0022	19.6472	$1,165.92	$354.45	$233.18
26121	T		Release palm contracture	0054	25.3711	$1,505.60		$301.12
26123	T		Release palm contracture	0054	25.3711	$1,505.60		$301.12
26125	T		Release palm contracture	0053	15.6795	$930.47	$253.49	$186.09
26130	T		Remove wrist joint lining	0053	15.6795	$930.47	$253.49	$186.09
26135	T		Revise finger joint, each	0054	25.3711	$1,505.60		$301.12
26140	T		Revise finger joint, each	0053	15.6795	$930.47	$253.49	$186.09
26145	T		Tendon excision, palm/finger	0053	15.6795	$930.47	$253.49	$186.09
26160	T		Remove tendon sheath lesion	0053	15.6795	$930.47	$253.49	$186.09
26170	T		Removal of palm tendon, each	0053	15.6795	$930.47	$253.49	$186.09
26180	T		Removal of finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26185	T		Remove finger bone	0053	15.6795	$930.47	$253.49	$186.09
26200	T		Remove hand bone lesion	0053	15.6795	$930.47	$253.49	$186.09
26205	T		Remove/graft bone lesion	0054	25.3711	$1,505.60		$301.12
26210	T		Removal of finger lesion	0053	15.6795	$930.47	$253.49	$186.09
26215	T		Remove/graft finger lesion	0053	15.6795	$930.47	$253.49	$186.09
26230	T		Partial removal of hand bone	0053	15.6795	$930.47	$253.49	$186.09
26235	T		Partial removal, finger bone	0053	15.6795	$930.47	$253.49	$186.09
26236	T		Partial removal, finger bone	0053	15.6795	$930.47	$253.49	$186.09
26250	T		Extensive hand surgery	0053	15.6795	$930.47	$253.49	$186.09
26255	T		Extensive hand surgery	0054	25.3711	$1,505.60		$301.12
26260	T		Extensive finger surgery	0053	15.6795	$930.47	$253.49	$186.09
26261	T		Extensive finger surgery	0053	15.6795	$930.47	$253.49	$186.09
26262	T		Partial removal of finger	0053	15.6795	$930.47	$253.49	$186.09
26320	T		Removal of implant from hand	0021	14.9776	$888.82	$219.48	$177.76
26340	T		Manipulate finger w/anesth	0043	1.7694	$105.00		$21.00
26350	T		Repair finger/hand tendon	0054	25.3711	$1,505.60		$301.12
26352	T		Repair/graft hand tendon	0054	25.3711	$1,505.60		$301.12
26356	T		Repair finger/hand tendon	0054	25.3711	$1,505.60		$301.12
26357	T		Repair finger/hand tendon	0054	25.3711	$1,505.60		$301.12
26358	T		Repair/graft hand tendon	0054	25.3711	$1,505.60		$301.12
26370	T		Repair finger/hand tendon	0054	25.3711	$1,505.60		$301.12
26372	T		Repair/graft hand tendon	0054	25.3711	$1,505.60		$301.12
26373	T		Repair finger/hand tendon	0054	25.3711	$1,505.60		$301.12
26390	T		Revise hand/finger tendon	0054	25.3711	$1,505.60		$301.12
26392	T		Repair/graft hand tendon	0054	25.3711	$1,505.60		$301.12
26410	T		Repair hand tendon	0053	15.6795	$930.47	$253.49	$186.09
26412	T		Repair/graft hand tendon	0054	25.3711	$1,505.60		$301.12
26415	T		Excision, hand/finger tendon	0054	25.3711	$1,505.60		$301.12
26416	T		Graft hand or finger tendon	0054	25.3711	$1,505.60		$301.12
26418	T		Repair finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26420	T		Repair/graft finger tendon	0054	25.3711	$1,505.60		$301.12
26426	T		Repair finger/hand tendon	0054	25.3711	$1,505.60		$301.12
26428	T		Repair/graft finger tendon	0054	25.3711	$1,505.60		$301.12
26432	T		Repair finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26433	T		Repair finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26434	T		Repair/graft finger tendon	0054	25.3711	$1,505.60		$301.12
26437	T		Realignment of tendons	0053	15.6795	$930.47	$253.49	$186.09
26440	T		Release palm/finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26442	T		Release palm & finger tendon	0054	25.3711	$1,505.60		$301.12

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26445	T		Release hand/finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26449	T		Release forearm/hand tendon	0054	25.3711	$1,505.60		$301.12
26450	T		Incision of palm tendon	0053	15.6795	$930.47	$253.49	$186.09
26455	T		Incision of finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26460	T		Incise hand/finger tendon	0053	15.6795	$930.47	$253.49	$186.09
26471	T		Fusion of finger tendons	0053	15.6795	$930.47	$253.49	$186.09
26474	T		Fusion of finger tendons	0053	15.6795	$930.47	$253.49	$186.09
26476	T		Tendon lengthening	0053	15.6795	$930.47	$253.49	$186.09
26477	T		Tendon shortening	0053	15.6795	$930.47	$253.49	$186.09
26478	T		Lengthening of hand tendon	0053	15.6795	$930.47	$253.49	$186.09
26479	T		Shortening of hand tendon	0053	15.6795	$930.47	$253.49	$186.09
26480	T		Transplant hand tendon	0054	25.3711	$1,505.60		$301.12
26483	T		Transplant/graft hand tendon	0054	25.3711	$1,505.60		$301.12
26485	T		Transplant palm tendon	0054	25.3711	$1,505.60		$301.12
26489	T		Transplant/graft palm tendon	0054	25.3711	$1,505.60		$301.12
26490	T		Revise thumb tendon	0054	25.3711	$1,505.60		$301.12
26492	T		Tendon transfer with graft	0054	25.3711	$1,505.60		$301.12
26494	T		Hand tendon/muscle transfer	0054	25.3711	$1,505.60		$301.12
26496	T		Revise thumb tendon	0054	25.3711	$1,505.60		$301.12
26497	T		Finger tendon transfer	0054	25.3711	$1,505.60		$301.12
26498	T		Finger tendon transfer	0054	25.3711	$1,505.60		$301.12
26499	T		Revision of finger	0054	25.3711	$1,505.60		$301.12
26500	T		Hand tendon reconstruction	0053	15.6795	$930.47	$253.49	$186.09
26502	T		Hand tendon reconstruction	0054	25.3711	$1,505.60		$301.12
26504	T		Hand tendon reconstruction	0054	25.3711	$1,505.60		$301.12
26508	T		Release thumb contracture	0053	15.6795	$930.47	$253.49	$186.09
26510	T		Thumb tendon transfer	0054	25.3711	$1,505.60		$301.12
26516	T		Fusion of knuckle joint	0054	25.3711	$1,505.60		$301.12
26517	T		Fusion of knuckle joints	0054	25.3711	$1,505.60		$301.12
26518	T		Fusion of knuckle joints	0054	25.3711	$1,505.60		$301.12
26520	T		Release knuckle contracture	0053	15.6795	$930.47	$253.49	$186.09
26525	T		Release finger contracture	0053	15.6795	$930.47	$253.49	$186.09
26530	T		Revise knuckle joint	0047	31.6107	$1,875.87	$537.03	$375.17
26531	T		Revise knuckle with implant	0048	43.1288	$2,559.39	$570.30	$511.88
26535	T		Revise finger joint	0047	31.6107	$1,875.87	$537.03	$375.17
26536	T		Revise/implant finger joint	0048	43.1288	$2,559.39	$570.30	$511.88
26540	T		Repair hand joint	0053	15.6795	$930.47	$253.49	$186.09
26541	T		Repair hand joint with graft	0054	25.3711	$1,505.60		$301.12
26542	T		Repair hand joint with graft	0053	15.6795	$930.47	$253.49	$186.09
26545	T		Reconstruct finger joint	0054	25.3711	$1,505.60		$301.12
26546	T		Repair nonunion hand	0054	25.3711	$1,505.60		$301.12
26548	T		Reconstruct finger joint	0054	25.3711	$1,505.60		$301.12
26550	T		Construct thumb replacement	0054	25.3711	$1,505.60		$301.12
26551	C		Great toe-hand transfer					
26553	C		Single transfer, toe-hand					
26554	C		Double transfer, toe-hand					
26555	T		Positional change of finger	0054	25.3711	$1,505.60		$301.12
26556	C		Toe joint transfer					
26560	T		Repair of web finger	0053	15.6795	$930.47	$253.49	$186.09
26561	T		Repair of web finger	0054	25.3711	$1,505.60		$301.12
26562	T		Repair of web finger	0054	25.3711	$1,505.60		$301.12
26565	T		Correct metacarpal flaw	0054	25.3711	$1,505.60		$301.12
26567	T		Correct finger deformity	0054	25.3711	$1,505.60		$301.12
26568	T		Lengthen metacarpal/finger	0054	25.3711	$1,505.60		$301.12
26580	T		Repair hand deformity	0053	15.6795	$930.47	$253.49	$186.09
26587	T		Reconstruct extra finger	0053	15.6795	$930.47	$253.49	$186.09
26590	T		Repair finger deformity	0053	15.6795	$930.47	$253.49	$186.09
26591	T		Repair muscles of hand	0054	25.3711	$1,505.60		$301.12
26593	T		Release muscles of hand	0053	15.6795	$930.47	$253.49	$186.09
26596	T		Excision constricting tissue	0053	15.6795	$930.47	$253.49	$186.09
26600	T		Treat metacarpal fracture	0043	1.7694	$105.00		$21.00
26605	T		Treat metacarpal fracture	0043	1.7694	$105.00		$21.00
26607	T		Treat metacarpal fracture	0043	1.7694	$105.00		$21.00
26608	T		Treat metacarpal fracture	0046	37.7023	$2,237.37	$535.76	$447.47
26615	T		Treat metacarpal fracture	0046	37.7023	$2,237.37	$535.76	$447.47
26641	T		Treat thumb dislocation	0043	1.7694	$105.00		$21.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26645	T		Treat thumb fracture	0043	1.7694	$105.00		$21.00
26650	T		Treat thumb fracture	0046	37.7023	$2,237.37	$535.76	$447.47
26665	T		Treat thumb fracture	0046	37.7023	$2,237.37	$535.76	$447.47
26670	T		Treat hand dislocation	0043	1.7694	$105.00		$21.00
26675	T		Treat hand dislocation	0043	1.7694	$105.00		$21.00
26676	T		Pin hand dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
26685	T		Treat hand dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
26686	T		Treat hand dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
26700	T		Treat knuckle dislocation	0043	1.7694	$105.00		$21.00
26705	T		Treat knuckle dislocation	0043	1.7694	$105.00		$21.00
26706	T		Pin knuckle dislocation	0043	1.7694	$105.00		$21.00
26715	T		Treat knuckle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
26720	T		Treat finger fracture, each	0043	1.7694	$105.00		$21.00
26725	T		Treat finger fracture, each	0043	1.7694	$105.00		$21.00
26727	T		Treat finger fracture, each	0046	37.7023	$2,237.37	$535.76	$447.47
26735	T		Treat finger fracture, each	0046	37.7023	$2,237.37	$535.76	$447.47
26740	T		Treat finger fracture, each	0043	1.7694	$105.00		$21.00
26742	T		Treat finger fracture, each	0043	1.7694	$105.00		$21.00
26746	T		Treat finger fracture, each	0046	37.7023	$2,237.37	$535.76	$447.47
26750	T		Treat finger fracture, each	0043	1.7694	$105.00		$21.00
26755	T		Treat finger fracture, each	0043	1.7694	$105.00		$21.00
26756	T		Pin finger fracture, each	0046	37.7023	$2,237.37	$535.76	$447.47
26765	T		Treat finger fracture, each	0046	37.7023	$2,237.37	$535.76	$447.47
26770	T		Treat finger dislocation	0043	1.7694	$105.00		$21.00
26775	T		Treat finger dislocation	0045	14.4945	$860.15	$268.47	$172.03
26776	T		Pin finger dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
26785	T		Treat finger dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
26820	T		Thumb fusion with graft	0054	25.3711	$1,505.60		$301.12
26841	T		Fusion of thumb	0054	25.3711	$1,505.60		$301.12
26842	T		Thumb fusion with graft	0054	25.3711	$1,505.60		$301.12
26843	T		Fusion of hand joint	0054	25.3711	$1,505.60		$301.12
26844	T		Fusion/graft of hand joint	0054	25.3711	$1,505.60		$301.12
26850	T		Fusion of knuckle	0054	25.3711	$1,505.60		$301.12
26852	T		Fusion of knuckle with graft	0054	25.3711	$1,505.60		$301.12
26860	T		Fusion of finger joint	0054	25.3711	$1,505.60		$301.12
26861	T		Fusion of finger jnt, add-on	0054	25.3711	$1,505.60		$301.12
26862	T		Fusion/graft of finger joint	0054	25.3711	$1,505.60		$301.12
26863	T		Fuse/graft added joint	0054	25.3711	$1,505.60		$301.12
26910	T		Amputate metacarpal bone	0054	25.3711	$1,505.60		$301.12
26951	T		Amputation of finger/thumb	0053	15.6795	$930.47	$253.49	$186.09
26952	T		Amputation of finger/thumb	0053	15.6795	$930.47	$253.49	$186.09
26989	T		Hand/finger surgery	0043	1.7694	$105.00		$21.00
26990	T		Drainage of pelvis lesion	0049	20.3707	$1,208.86		$241.77
26991	T		Drainage of pelvis bursa	0049	20.3707	$1,208.86		$241.77
26992	C		Drainage of bone lesion					
27000	T		Incision of hip tendon	0049	20.3707	$1,208.86		$241.77
27001	T		Incision of hip tendon	0050	23.9081	$1,418.78		$283.76
27003	T		Incision of hip tendon	0050	23.9081	$1,418.78		$283.76
27005	C		Incision of hip tendon					
27006	C		Incision of hip tendons					
27025	C		Incision of hip/thigh fascia					
27030	C		Drainage of hip joint					
27033	T		Exploration of hip joint	0051	36.5271	$2,167.63		$433.53
27035	T		Denervation of hip joint	0052	43.9378	$2,607.40		$521.48
27036	C		Excision of hip joint/muscle					
27040	T		Biopsy of soft tissues	0020	6.9433	$412.04	$107.40	$82.41
27041	T		Biopsy of soft tissues	0020	6.9433	$412.04	$107.40	$82.41
27047	T		Remove hip/pelvis lesion	0022	19.6472	$1,165.92	$354.45	$233.18
27048	T		Remove hip/pelvis lesion	0022	19.6472	$1,165.92	$354.45	$233.18
27049	T		Remove tumor, hip/pelvis	0022	19.6472	$1,165.92	$354.45	$233.18
27050	T		Biopsy of sacroiliac joint	0049	20.3707	$1,208.86		$241.77
27052	T		Biopsy of hip joint	0049	20.3707	$1,208.86		$241.77
27054	C		Removal of hip joint lining					
27060	T		Removal of ischial bursa	0049	20.3707	$1,208.86		$241.77
27062	T		Remove femur lesion/bursa	0049	20.3707	$1,208.86		$241.77
27065	T		Removal of hip bone lesion	0049	20.3707	$1,208.86		$241.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27066	T		Removal of hip bone lesion	0050	23.9081	$1,418.78		$283.76
27067	T		Remove/graft hip bone lesion	0050	23.9081	$1,418.78		$283.76
27070	C		Partial removal of hip bone					
27071	C		Partial removal of hip bone					
27075	C		Extensive hip surgery					
27076	C		Extensive hip surgery					
27077	C		Extensive hip surgery					
27078	C		Extensive hip surgery					
27079	C		Extensive hip surgery					
27080	T		Removal of tail bone	0050	23.9081	$1,418.78		$283.76
27086	T		Remove hip foreign body	0020	6.9433	$412.04	$107.40	$82.41
27087	T		Remove hip foreign body	0049	20.3707	$1,208.86		$241.77
27090	C		Removal of hip prosthesis					
27091	C		Removal of hip prosthesis					
27093	N		Injection for hip x-ray					
27095	N		Injection for hip x-ray					
27096	B		Inject sacroiliac joint					
27097	T		Revision of hip tendon	0050	23.9081	$1,418.78		$283.76
27098	T		Transfer tendon to pelvis	0050	23.9081	$1,418.78		$283.76
27100	T		Transfer of abdominal muscle	0051	36.5271	$2,167.63		$433.53
27105	T		Transfer of spinal muscle	0051	36.5271	$2,167.63		$433.53
27110	T		Transfer of iliopsoas muscle	0051	36.5271	$2,167.63		$433.53
27111	T		Transfer of iliopsoas muscle	0051	36.5271	$2,167.63		$433.53
27120	C		Reconstruction of hip socket					
27122	C		Reconstruction of hip socket					
27125	C		Partial hip replacement					
27130	C		Total hip arthroplasty					
27132	C		Total hip arthroplasty					
27134	C		Revise hip joint replacement					
27137	C		Revise hip joint replacement					
27138	C		Revise hip joint replacement					
27140	C		Transplant femur ridge					
27146	C		Incision of hip bone					
27147	C		Revision of hip bone					
27151	C		Incision of hip bones					
27156	C		Revision of hip bones					
27158	C		Revision of pelvis					
27161	C		Incision of neck of femur					
27165	C		Incision/fixation of femur					
27170	C		Repair/graft femur head/neck					
27175	C		Treat slipped epiphysis					
27176	C		Treat slipped epiphysis					
27177	C		Treat slipped epiphysis					
27178	C		Treat slipped epiphysis					
27179	C		Revise head/neck of femur					
27181	C		Treat slipped epiphysis					
27185	C		Revision of femur epiphysis					
27187	C		Reinforce hip bones					
27193	T		Treat pelvic ring fracture	0043	1.7694	$105.00		$21.00
27194	T		Treat pelvic ring fracture	0045	14.4945	$860.15	$268.47	$172.03
27200	T		Treat tail bone fracture	0043	1.7694	$105.00		$21.00
27202	T		Treat tail bone fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27215	C		Treat pelvic fracture(s)					
27216	T		Treat pelvic ring fracture	0050	23.9081	$1,418.78		$283.76
27217	C		Treat pelvic ring fracture					
27218	C		Treat pelvic ring fracture					
27220	T		Treat hip socket fracture	0043	1.7694	$105.00		$21.00
27222	C		Treat hip socket fracture					
27226	C		Treat hip wall fracture					
27227	C		Treat hip fracture(s)					
27228	C		Treat hip fracture(s)					
27230	T		Treat thigh fracture	0043	1.7694	$105.00		$21.00
27232	C		Treat thigh fracture					
27235	T		Treat thigh fracture	0050	23.9081	$1,418.78		$283.76
27236	C		Treat thigh fracture					
27238	T		Treat thigh fracture	0043	1.7694	$105.00		$21.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27240	C		Treat thigh fracture					
27244	C		Treat thigh fracture					
27245	C		Treat thigh fracture					
27246	T		Treat thigh fracture	0043	1.7694	$105.00		$21.00
27248	C		Treat thigh fracture					
27250	T		Treat hip dislocation	0043	1.7694	$105.00		$21.00
27252	T		Treat hip dislocation	0045	14.4945	$860.15	$268.47	$172.03
27253	C		Treat hip dislocation					
27254	C		Treat hip dislocation					
27256	T		Treat hip dislocation	0043	1.7694	$105.00		$21.00
27257	T		Treat hip dislocation	0045	14.4945	$860.15	$268.47	$172.03
27258	C		Treat hip dislocation					
27259	C		Treat hip dislocation					
27265	T		Treat hip dislocation	0043	1.7694	$105.00		$21.00
27266	T		Treat hip dislocation	0045	14.4945	$860.15	$268.47	$172.03
27275	T		Manipulation of hip joint	0045	14.4945	$860.15	$268.47	$172.03
27280	C		Fusion of sacroiliac joint					
27282	C		Fusion of pubic bones					
27284	C		Fusion of hip joint					
27286	C		Fusion of hip joint					
27290	C		Amputation of leg at hip					
27295	C		Amputation of leg at hip					
27299	T		Pelvis/hip joint surgery	0043	1.7694	$105.00		$21.00
27301	T		Drain thigh/knee lesion	0008	16.4989	$979.09		$195.82
27303	C		Drainage of bone lesion					
27305	T		Incise thigh tendon & fascia	0049	20.3707	$1,208.86		$241.77
27306	T		Incision of thigh tendon	0049	20.3707	$1,208.86		$241.77
27307	T		Incision of thigh tendons	0049	20.3707	$1,208.86		$241.77
27310	T		Exploration of knee joint	0050	23.9081	$1,418.78		$283.76
27315	T		Partial removal, thigh nerve	0220	17.3586	$1,030.11		$206.02
27320	T		Partial removal, thigh nerve	0220	17.3586	$1,030.11		$206.02
27323	T		Biopsy, thigh soft tissues	0021	14.9776	$888.82	$219.48	$177.76
27324	T		Biopsy, thigh soft tissues	0022	19.6472	$1,165.92	$354.45	$233.18
27327	T		Removal of thigh lesion	0022	19.6472	$1,165.92	$354.45	$233.18
27328	T		Removal of thigh lesion	0022	19.6472	$1,165.92	$354.45	$233.18
27329	T		Remove tumor, thigh/knee	0022	19.6472	$1,165.92	$354.45	$233.18
27330	T		Biopsy, knee joint lining	0050	23.9081	$1,418.78		$283.76
27331	T		Explore/treat knee joint	0050	23.9081	$1,418.78		$283.76
27332	T		Removal of knee cartilage	0050	23.9081	$1,418.78		$283.76
27333	T		Removal of knee cartilage	0050	23.9081	$1,418.78		$283.76
27334	T		Remove knee joint lining	0050	23.9081	$1,418.78		$283.76
27335	T		Remove knee joint lining	0050	23.9081	$1,418.78		$283.76
27340	T		Removal of kneecap bursa	0049	20.3707	$1,208.86		$241.77
27345	T		Removal of knee cyst	0049	20.3707	$1,208.86		$241.77
27347	T		Remove knee cyst	0049	20.3707	$1,208.86		$241.77
27350	T		Removal of kneecap	0050	23.9081	$1,418.78		$283.76
27355	T		Remove femur lesion	0050	23.9081	$1,418.78		$283.76
27356	T		Remove femur lesion/graft	0050	23.9081	$1,418.78		$283.76
27357	T		Remove femur lesion/graft	0050	23.9081	$1,418.78		$283.76
27358	T		Remove femur lesion/fixation	0050	23.9081	$1,418.78		$283.76
27360	T		Partial removal, leg bone(s)	0050	23.9081	$1,418.78		$283.76
27365	C		Extensive leg surgery					
27370	N		Injection for knee x-ray					
27372	T		Removal of foreign body	0022	19.6472	$1,165.92	$354.45	$233.18
27380	T		Repair of kneecap tendon	0049	20.3707	$1,208.86		$241.77
27381	T		Repair/graft kneecap tendon	0049	20.3707	$1,208.86		$241.77
27385	T		Repair of thigh muscle	0049	20.3707	$1,208.86		$241.77
27386	T		Repair/graft of thigh muscle	0049	20.3707	$1,208.86		$241.77
27390	T		Incision of thigh tendon	0049	20.3707	$1,208.86		$241.77
27391	T		Incision of thigh tendons	0049	20.3707	$1,208.86		$241.77
27392	T		Incision of thigh tendons	0049	20.3707	$1,208.86		$241.77
27393	T		Lengthening of thigh tendon	0050	23.9081	$1,418.78		$283.76
27394	T		Lengthening of thigh tendons	0050	23.9081	$1,418.78		$283.76
27395	T		Lengthening of thigh tendons	0051	36.5271	$2,167.63		$433.53
27396	T		Transplant of thigh tendon	0050	23.9081	$1,418.78		$283.76
27397	T		Transplants of thigh tendons	0051	36.5271	$2,167.63		$433.53

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27400	T		Revise thigh muscles/tendons	0051	36.5271	$2,167.63		$433.53
27403	T		Repair of knee cartilage	0050	23.9081	$1,418.78		$283.76
27405	T		Repair of knee ligament	0051	36.5271	$2,167.63		$433.53
27407	T		Repair of knee ligament	0051	36.5271	$2,167.63		$433.53
27409	T		Repair of knee ligaments	0051	36.5271	$2,167.63		$433.53
27412	T		Autochondrocyte implant knee	0042	43.9753	$2,609.63	$804.74	$521.93
27415	T		Osteochondral knee allograft	0042	43.9753	$2,609.63	$804.74	$521.93
27418	T		Repair degenerated kneecap	0051	36.5271	$2,167.63		$433.53
27420	T		Revision of unstable kneecap	0051	36.5271	$2,167.63		$433.53
27422	T		Revision of unstable kneecap	0051	36.5271	$2,167.63		$433.53
27424	T		Revision/removal of kneecap	0051	36.5271	$2,167.63		$433.53
27425	T		Lateral retinacular release	0050	23.9081	$1,418.78		$283.76
27427	T		Reconstruction, knee	0052	43.9378	$2,607.40		$521.48
27428	T		Reconstruction, knee	0052	43.9378	$2,607.40		$521.48
27429	T		Reconstruction, knee	0052	43.9378	$2,607.40		$521.48
27430	T		Revision of thigh muscles	0051	36.5271	$2,167.63		$433.53
27435	T		Incision of knee joint	0051	36.5271	$2,167.63		$433.53
27437	T		Revise kneecap	0047	31.6107	$1,875.87	$537.03	$375.17
27438	T		Revise kneecap with implant	0048	43.1288	$2,559.39	$570.30	$511.88
27440	T		Revision of knee joint	0047	31.6107	$1,875.87	$537.03	$375.17
27441	T		Revision of knee joint	0047	31.6107	$1,875.87	$537.03	$375.17
27442	T		Revision of knee joint	0047	31.6107	$1,875.87	$537.03	$375.17
27443	T		Revision of knee joint	0047	31.6107	$1,875.87	$537.03	$375.17
27445	C		Revision of knee joint					
27446	T		Revision of knee joint	0681	137.163	$8,139.66	$2,081.48	$1,627.93
27447	C		Total knee arthroplasty					
27448	C		Incision of thigh					
27450	C		Incision of thigh					
27454	C		Realignment of thigh bone					
27455	C		Realignment of knee					
27457	C		Realignment of knee					
27465	C		Shortening of thigh bone					
27466	C		Lengthening of thigh bone					
27468	C		Shorten/lengthen thighs					
27470	C		Repair of thigh					
27472	C		Repair/graft of thigh					
27475	T		Surgery to stop leg growth	0050	23.9081	$1,418.78		$283.76
27477	C		Surgery to stop leg growth					
27479	C		Surgery to stop leg growth					
27485	C		Surgery to stop leg growth					
27486	C		Revise/replace knee joint					
27487	C		Revise/replace knee joint					
27488	C		Removal of knee prosthesis					
27495	C		Reinforce thigh					
27496	T		Decompression of thigh/knee	0049	20.3707	$1,208.86		$241.77
27497	T		Decompression of thigh/knee	0049	20.3707	$1,208.86		$241.77
27498	T		Decompression of thigh/knee	0049	20.3707	$1,208.86		$241.77
27499	T		Decompression of thigh/knee	0049	20.3707	$1,208.86		$241.77
27500	T		Treatment of thigh fracture	0043	1.7694	$105.00		$21.00
27501	T		Treatment of thigh fracture	0043	1.7694	$105.00		$21.00
27502	T		Treatment of thigh fracture	0043	1.7694	$105.00		$21.00
27503	T		Treatment of thigh fracture	0043	1.7694	$105.00		$21.00
27506	C		Treatment of thigh fracture					
27507	C		Treatment of thigh fracture					
27508	T		Treatment of thigh fracture	0043	1.7694	$105.00		$21.00
27509	T		Treatment of thigh fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27510	T		Treatment of thigh fracture	0043	1.7694	$105.00		$21.00
27511	C		Treatment of thigh fracture					
27513	C		Treatment of thigh fracture					
27514	C		Treatment of thigh fracture					
27516	T		Treat thigh fx growth plate	0043	1.7694	$105.00		$21.00
27517	T		Treat thigh fx growth plate	0043	1.7694	$105.00		$21.00
27519	C		Treat thigh fx growth plate					
27520	T		Treat kneecap fracture	0043	1.7694	$105.00		$21.00
27524	T		Treat kneecap fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27530	T		Treat knee fracture	0043	1.7694	$105.00		$21.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27532	T		Treat knee fracture	0043	1.7694	$105.00		$21.00
27535	C		Treat knee fracture					
27536	C		Treat knee fracture					
27538	T		Treat knee fracture(s)	0043	1.7694	$105.00		$21.00
27540	C		Treat knee fracture					
27550	T		Treat knee dislocation	0043	1.7694	$105.00		$21.00
27552	T		Treat knee dislocation	0045	14.4945	$860.15	$268.47	$172.03
27556	C		Treat knee dislocation					
27557	C		Treat knee dislocation					
27558	C		Treat knee dislocation					
27560	T		Treat kneecap dislocation	0043	1.7694	$105.00		$21.00
27562	T		Treat kneecap dislocation	0045	14.4945	$860.15	$268.47	$172.03
27566	T		Treat kneecap dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
27570	T		Fixation of knee joint	0045	14.4945	$860.15	$268.47	$172.03
27580	C		Fusion of knee					
27590	C		Amputate leg at thigh					
27591	C		Amputate leg at thigh					
27592	C		Amputate leg at thigh					
27594	T		Amputation follow-up surgery	0049	20.3707	$1,208.86		$241.77
27596	C		Amputation follow-up surgery					
27598	C		Amputate lower leg at knee					
27599	T		Leg surgery procedure	0043	1.7694	$105.00		$21.00
27600	T		Decompression of lower leg	0049	20.3707	$1,208.86		$241.77
27601	T		Decompression of lower leg	0049	20.3707	$1,208.86		$241.77
27602	T		Decompression of lower leg	0049	20.3707	$1,208.86		$241.77
27603	T		Drain lower leg lesion	0008	16.4989	$979.09		$195.82
27604	T		Drain lower leg bursa	0049	20.3707	$1,208.86		$241.77
27605	T		Incision of achilles tendon	0055	20.0692	$1,190.97	$355.34	$238.19
27606	T		Incision of achilles tendon	0049	20.3707	$1,208.86		$241.77
27607	T		Treat lower leg bone lesion	0049	20.3707	$1,208.86		$241.77
27610	T		Explore/treat ankle joint	0050	23.9081	$1,418.78		$283.76
27612	T		Exploration of ankle joint	0050	23.9081	$1,418.78		$283.76
27613	T		Biopsy lower leg soft tissue	0020	6.9433	$412.04	$107.40	$82.41
27614	T		Biopsy lower leg soft tissue	0022	19.6472	$1,165.92	$354.45	$233.18
27615	T		Remove tumor, lower leg	0046	37.7023	$2,237.37	$535.76	$447.47
27618	T		Remove lower leg lesion	0021	14.9776	$888.82	$219.48	$177.76
27619	T		Remove lower leg lesion	0022	19.6472	$1,165.92	$354.45	$233.18
27620	T		Explore/treat ankle joint	0050	23.9081	$1,418.78		$283.76
27625	T		Remove ankle joint lining	0050	23.9081	$1,418.78		$283.76
27626	T		Remove ankle joint lining	0050	23.9081	$1,418.78		$283.76
27630	T		Removal of tendon lesion	0049	20.3707	$1,208.86		$241.77
27635	T		Remove lower leg bone lesion	0050	23.9081	$1,418.78		$283.76
27637	T		Remove/graft leg bone lesion	0050	23.9081	$1,418.78		$283.76
27638	T		Remove/graft leg bone lesion	0050	23.9081	$1,418.78		$283.76
27640	T		Partial removal of tibia	0051	36.5271	$2,167.63		$433.53
27641	T		Partial removal of fibula	0050	23.9081	$1,418.78		$283.76
27645	C		Extensive lower leg surgery					
27646	C		Extensive lower leg surgery					
27647	T		Extensive ankle/heel surgery	0051	36.5271	$2,167.63		$433.53
27648	N		Injection for ankle x-ray					
27650	T		Repair achilles tendon	0051	36.5271	$2,167.63		$433.53
27652	T		Repair/graft achilles tendon	0051	36.5271	$2,167.63		$433.53
27654	T		Repair of achilles tendon	0051	36.5271	$2,167.63		$433.53
27656	T		Repair leg fascia defect	0049	20.3707	$1,208.86		$241.77
27658	T		Repair of leg tendon, each	0049	20.3707	$1,208.86		$241.77
27659	T		Repair of leg tendon, each	0049	20.3707	$1,208.86		$241.77
27664	T		Repair of leg tendon, each	0049	20.3707	$1,208.86		$241.77
27665	T		Repair of leg tendon, each	0050	23.9081	$1,418.78		$283.76
27675	T		Repair lower leg tendons	0049	20.3707	$1,208.86		$241.77
27676	T		Repair lower leg tendons	0050	23.9081	$1,418.78		$283.76
27680	T		Release of lower leg tendon	0050	23.9081	$1,418.78		$283.76
27681	T		Release of lower leg tendons	0050	23.9081	$1,418.78		$283.76
27685	T		Revision of lower leg tendon	0050	23.9081	$1,418.78		$283.76
27686	T		Revise lower leg tendons	0050	23.9081	$1,418.78		$283.76
27687	T		Revision of calf tendon	0050	23.9081	$1,418.78		$283.76
27690	T		Revise lower leg tendon	0051	36.5271	$2,167.63		$433.53

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27691	T		Revise lower leg tendon	0051	36.5271	$2,167.63		$433.53
27692	T		Revise additional leg tendon	0051	36.5271	$2,167.63		$433.53
27695	T		Repair of ankle ligament	0050	23.9081	$1,418.78		$283.76
27696	T		Repair of ankle ligaments	0050	23.9081	$1,418.78		$283.76
27698	T		Repair of ankle ligament	0050	23.9081	$1,418.78		$283.76
27700	T		Revision of ankle joint	0047	31.6107	$1,875.87	$537.03	$375.17
27702	C		Reconstruct ankle joint					
27703	C		Reconstruction, ankle joint					
27704	T		Removal of ankle implant	0049	20.3707	$1,208.86		$241.77
27705	T		Incision of tibia	0051	36.5271	$2,167.63		$433.53
27707	T		Incision of fibula	0049	20.3707	$1,208.86		$241.77
27709	T		Incision of tibia & fibula	0050	23.9081	$1,418.78		$283.76
27712	C		Realignment of lower leg					
27715	C		Revision of lower leg					
27720	C		Repair of tibia					
27722	C		Repair/graft of tibia					
27724	C		Repair/graft of tibia					
27725	C		Repair of lower leg					
27727	C		Repair of lower leg					
27730	T		Repair of tibia epiphysis	0050	23.9081	$1,418.78		$283.76
27732	T		Repair of fibula epiphysis	0050	23.9081	$1,418.78		$283.76
27734	T		Repair lower leg epiphyses	0050	23.9081	$1,418.78		$283.76
27740	T		Repair of leg epiphyses	0050	23.9081	$1,418.78		$283.76
27742	T		Repair of leg epiphyses	0051	36.5271	$2,167.63		$433.53
27745	T		Reinforce tibia	0051	36.5271	$2,167.63		$433.53
27750	T		Treatment of tibia fracture	0043	1.7694	$105.00		$21.00
27752	T		Treatment of tibia fracture	0043	1.7694	$105.00		$21.00
27756	T		Treatment of tibia fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27758	T		Treatment of tibia fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27759	T		Treatment of tibia fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27760	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27762	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27766	T		Treatment of ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27780	T		Treatment of fibula fracture	0043	1.7694	$105.00		$21.00
27781	T		Treatment of fibula fracture	0043	1.7694	$105.00		$21.00
27784	T		Treatment of fibula fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27786	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27788	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27792	T		Treatment of ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27808	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27810	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27814	T		Treatment of ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27816	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27818	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
27822	T		Treatment of ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27823	T		Treatment of ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27824	T		Treat lower leg fracture	0043	1.7694	$105.00		$21.00
27825	T		Treat lower leg fracture	0043	1.7694	$105.00		$21.00
27826	T		Treat lower leg fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27827	T		Treat lower leg fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27828	T		Treat lower leg fracture	0046	37.7023	$2,237.37	$535.76	$447.47
27829	T		Treat lower leg joint	0046	37.7023	$2,237.37	$535.76	$447.47
27830	T		Treat lower leg dislocation	0043	1.7694	$105.00		$21.00
27831	T		Treat lower leg dislocation	0043	1.7694	$105.00		$21.00
27832	T		Treat lower leg dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
27840	T		Treat ankle dislocation	0043	1.7694	$105.00		$21.00
27842	T		Treat ankle dislocation	0045	14.4945	$860.15	$268.47	$172.03
27846	T		Treat ankle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
27848	T		Treat ankle dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
27860	T		Fixation of ankle joint	0045	14.4945	$860.15	$268.47	$172.03
27870	T		Fusion of ankle joint	0051	36.5271	$2,167.63		$433.53
27871	T		Fusion of tibiofibular joint	0051	36.5271	$2,167.63		$433.53
27880	C		Amputation of lower leg					
27881	C		Amputation of lower leg					
27882	C		Amputation of lower leg					
27884	T		Amputation follow-up surgery	0049	20.3707	$1,208.86		$241.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27886	C		Amputation follow-up surgery					
27888	C		Amputation of foot at ankle					
27889	T		Amputation of foot at ankle	0050	23.9081	$1,418.78		$283.76
27892	T		Decompression of leg	0049	20.3707	$1,208.86		$241.77
27893	T		Decompression of leg	0049	20.3707	$1,208.86		$241.77
27894	T		Decompression of leg	0049	20.3707	$1,208.86		$241.77
27899	T		Leg/ankle surgery procedure	0043	1.7694	$105.00		$21.00
28001	T		Drainage of bursa of foot	0007	11.4501	$679.48		$135.90
28002	T		Treatment of foot infection	0049	20.3707	$1,208.86		$241.77
28003	T		Treatment of foot infection	0049	20.3707	$1,208.86		$241.77
28005	T		Treat foot bone lesion	0055	20.0692	$1,190.97	$355.34	$238.19
28008	T		Incision of foot fascia	0055	20.0692	$1,190.97	$355.34	$238.19
28010	T		Incision of toe tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28011	T		Incision of toe tendons	0055	20.0692	$1,190.97	$355.34	$238.19
28020	T		Exploration of foot joint	0055	20.0692	$1,190.97	$355.34	$238.19
28022	T		Exploration of foot joint	0055	20.0692	$1,190.97	$355.34	$238.19
28024	T		Exploration of toe joint	0055	20.0692	$1,190.97	$355.34	$238.19
28030	T		Removal of foot nerve	0220	17.3586	$1,030.11		$206.02
28035	T		Decompression of tibia nerve	0220	17.3586	$1,030.11		$206.02
28043	T		Excision of foot lesion	0021	14.9776	$888.82	$219.48	$177.76
28045	T		Excision of foot lesion	0055	20.0692	$1,190.97	$355.34	$238.19
28046	T		Resection of tumor, foot	0055	20.0692	$1,190.97	$355.34	$238.19
28050	T		Biopsy of foot joint lining	0055	20.0692	$1,190.97	$355.34	$238.19
28052	T		Biopsy of foot joint lining	0055	20.0692	$1,190.97	$355.34	$238.19
28054	T		Biopsy of toe joint lining	0055	20.0692	$1,190.97	$355.34	$238.19
28060	T		Partial removal, foot fascia	0055	20.0692	$1,190.97	$355.34	$238.19
28062	T		Removal of foot fascia	0055	20.0692	$1,190.97	$355.34	$238.19
28070	T		Removal of foot joint lining	0055	20.0692	$1,190.97	$355.34	$238.19
28072	T		Removal of foot joint lining	0055	20.0692	$1,190.97	$355.34	$238.19
28080	T		Removal of foot lesion	0055	20.0692	$1,190.97	$355.34	$238.19
28086	T		Excise foot tendon sheath	0055	20.0692	$1,190.97	$355.34	$238.19
28088	T		Excise foot tendon sheath	0055	20.0692	$1,190.97	$355.34	$238.19
28090	T		Removal of foot lesion	0055	20.0692	$1,190.97	$355.34	$238.19
28092	T		Removal of toe lesions	0055	20.0692	$1,190.97	$355.34	$238.19
28100	T		Removal of ankle/heel lesion	0055	20.0692	$1,190.97	$355.34	$238.19
28102	T		Remove/graft foot lesion	0056	40.2957	$2,391.27		$478.25
28103	T		Remove/graft foot lesion	0056	40.2957	$2,391.27		$478.25
28104	T		Removal of foot lesion	0055	20.0692	$1,190.97	$355.34	$238.19
28106	T		Remove/graft foot lesion	0056	40.2957	$2,391.27		$478.25
28107	T		Remove/graft foot lesion	0056	40.2957	$2,391.27		$478.25
28108	T		Removal of toe lesions	0055	20.0692	$1,190.97	$355.34	$238.19
28110	T		Part removal of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28111	T		Part removal of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28112	T		Part removal of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28113	T		Part removal of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28114	T		Removal of metatarsal heads	0055	20.0692	$1,190.97	$355.34	$238.19
28116	T		Revision of foot	0055	20.0692	$1,190.97	$355.34	$238.19
28118	T		Removal of heel bone	0055	20.0692	$1,190.97	$355.34	$238.19
28119	T		Removal of heel spur	0055	20.0692	$1,190.97	$355.34	$238.19
28120	T		Part removal of ankle/heel	0055	20.0692	$1,190.97	$355.34	$238.19
28122	T		Partial removal of foot bone	0055	20.0692	$1,190.97	$355.34	$238.19
28124	T		Partial removal of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28126	T		Partial removal of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28130	T		Removal of ankle bone	0055	20.0692	$1,190.97	$355.34	$238.19
28140	T		Removal of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28150	T		Removal of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28153	T		Partial removal of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28160	T		Partial removal of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28171	T		Extensive foot surgery	0055	20.0692	$1,190.97	$355.34	$238.19
28173	T		Extensive foot surgery	0055	20.0692	$1,190.97	$355.34	$238.19
28175	T		Extensive foot surgery	0055	20.0692	$1,190.97	$355.34	$238.19
28190	T		Removal of foot foreign body	0019	4.0547	$240.62	$71.87	$48.12
28192	T		Removal of foot foreign body	0021	14.9776	$888.82	$219.48	$177.76
28193	T		Removal of foot foreign body	0020	6.9433	$412.04	$107.40	$82.41
28200	T		Repair of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28202	T		Repair/graft of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28208	T		Repair of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28210	T		Repair/graft of foot tendon	0056	40.2957	$2,391.27		$478.25
28220	T		Release of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28222	T		Release of foot tendons	0055	20.0692	$1,190.97	$355.34	$238.19
28225	T		Release of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28226	T		Release of foot tendons	0055	20.0692	$1,190.97	$355.34	$238.19
28230	T		Incision of foot tendon(s)	0055	20.0692	$1,190.97	$355.34	$238.19
28232	T		Incision of toe tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28234	T		Incision of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28238	T		Revision of foot tendon	0056	40.2957	$2,391.27		$478.25
28240	T		Release of big toe	0055	20.0692	$1,190.97	$355.34	$238.19
28250	T		Revision of foot fascia	0055	20.0692	$1,190.97	$355.34	$238.19
28260	T		Release of midfoot joint	0055	20.0692	$1,190.97	$355.34	$238.19
28261	T		Revision of foot tendon	0055	20.0692	$1,190.97	$355.34	$238.19
28262	T		Revision of foot and ankle	0055	20.0692	$1,190.97	$355.34	$238.19
28264	T		Release of midfoot joint	0056	40.2957	$2,391.27		$478.25
28270	T		Release of foot contracture	0055	20.0692	$1,190.97	$355.34	$238.19
28272	T		Release of toe joint, each	0055	20.0692	$1,190.97	$355.34	$238.19
28280	T		Fusion of toes	0055	20.0692	$1,190.97	$355.34	$238.19
28285	T		Repair of hammertoe	0055	20.0692	$1,190.97	$355.34	$238.19
28286	T		Repair of hammertoe	0055	20.0692	$1,190.97	$355.34	$238.19
28288	T		Partial removal of foot bone	0055	20.0692	$1,190.97	$355.34	$238.19
28289	T		Repair hallux rigidus	0055	20.0692	$1,190.97	$355.34	$238.19
28290	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28292	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28293	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28294	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28296	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28297	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28298	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28299	T		Correction of bunion	0057	27.5493	$1,634.86	$475.91	$326.97
28300	T		Incision of heel bone	0056	40.2957	$2,391.27		$478.25
28302	T		Incision of ankle bone	0055	20.0692	$1,190.97	$355.34	$238.19
28304	T		Incision of midfoot bones	0056	40.2957	$2,391.27		$478.25
28305	T		Incise/graft midfoot bones	0056	40.2957	$2,391.27		$478.25
28306	T		Incision of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28307	T		Incision of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28308	T		Incision of metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28309	T		Incision of metatarsals	0056	40.2957	$2,391.27		$478.25
28310	T		Revision of big toe	0055	20.0692	$1,190.97	$355.34	$238.19
28312	T		Revision of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28313	T		Repair deformity of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28315	T		Removal of sesamoid bone	0055	20.0692	$1,190.97	$355.34	$238.19
28320	T		Repair of foot bones	0056	40.2957	$2,391.27		$478.25
28322	T		Repair of metatarsals	0056	40.2957	$2,391.27		$478.25
28340	T		Resect enlarged toe tissue	0055	20.0692	$1,190.97	$355.34	$238.19
28341	T		Resect enlarged toe	0055	20.0692	$1,190.97	$355.34	$238.19
28344	T		Repair extra toe(s)	0055	20.0692	$1,190.97	$355.34	$238.19
28345	T		Repair webbed toe(s)	0055	20.0692	$1,190.97	$355.34	$238.19
28360	T		Reconstruct cleft foot	0056	40.2957	$2,391.27		$478.25
28400	T		Treatment of heel fracture	0043	1.7694	$105.00		$21.00
28405	T		Treatment of heel fracture	0043	1.7694	$105.00		$21.00
28406	T		Treatment of heel fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28415	T		Treat heel fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28420	T		Treat/graft heel fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28430	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
28435	T		Treatment of ankle fracture	0043	1.7694	$105.00		$21.00
28436	T		Treatment of ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28445	T		Treat ankle fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28450	T		Treat midfoot fracture, each	0043	1.7694	$105.00		$21.00
28455	T		Treat midfoot fracture, each	0043	1.7694	$105.00		$21.00
28456	T		Treat midfoot fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28465	T		Treat midfoot fracture, each	0046	37.7023	$2,237.37	$535.76	$447.47
28470	T		Treat metatarsal fracture	0043	1.7694	$105.00		$21.00
28475	T		Treat metatarsal fracture	0043	1.7694	$105.00		$21.00
28476	T		Treat metatarsal fracture	0046	37.7023	$2,237.37	$535.76	$447.47

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28485	T		Treat metatarsal fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28490	T		Treat big toe fracture	0043	1.7694	$105.00		$21.00
28495	T		Treat big toe fracture	0043	1.7694	$105.00		$21.00
28496	T		Treat big toe fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28505	T		Treat big toe fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28510	T		Treatment of toe fracture	0043	1.7694	$105.00		$21.00
28515	T		Treatment of toe fracture	0043	1.7694	$105.00		$21.00
28525	T		Treat toe fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28530	T		Treat sesamoid bone fracture	0043	1.7694	$105.00		$21.00
28531	T		Treat sesamoid bone fracture	0046	37.7023	$2,237.37	$535.76	$447.47
28540	T		Treat foot dislocation	0043	1.7694	$105.00		$21.00
28545	T		Treat foot dislocation	0045	14.4945	$860.15	$268.47	$172.03
28546	T		Treat foot dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28555	T		Repair foot dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28570	T		Treat foot dislocation	0043	1.7694	$105.00		$21.00
28575	T		Treat foot dislocation	0043	1.7694	$105.00		$21.00
28576	T		Treat foot dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28585	T		Repair foot dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28600	T		Treat foot dislocation	0043	1.7694	$105.00		$21.00
28605	T		Treat foot dislocation	0043	1.7694	$105.00		$21.00
28606	T		Treat foot dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28615	T		Repair foot dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28630	T		Treat toe dislocation	0043	1.7694	$105.00		$21.00
28635	T		Treat toe dislocation	0045	14.4945	$860.15	$268.47	$172.03
28636	T		Treat toe dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28645	T		Repair toe dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28660	T		Treat toe dislocation	0043	1.7694	$105.00		$21.00
28665	T		Treat toe dislocation	0045	14.4945	$860.15	$268.47	$172.03
28666	T		Treat toe dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28675	T		Repair of toe dislocation	0046	37.7023	$2,237.37	$535.76	$447.47
28705	T		Fusion of foot bones	0056	40.2957	$2,391.27		$478.25
28715	T		Fusion of foot bones	0056	40.2957	$2,391.27		$478.25
28725	T		Fusion of foot bones	0056	40.2957	$2,391.27		$478.25
28730	T		Fusion of foot bones	0056	40.2957	$2,391.27		$478.25
28735	T		Fusion of foot bones	0056	40.2957	$2,391.27		$478.25
28737	T		Revision of foot bones	0056	40.2957	$2,391.27		$478.25
28740	T		Fusion of foot bones	0056	40.2957	$2,391.27		$478.25
28750	T		Fusion of big toe joint	0056	40.2957	$2,391.27		$478.25
28755	T		Fusion of big toe joint	0055	20.0692	$1,190.97	$355.34	$238.19
28760	T		Fusion of big toe joint	0056	40.2957	$2,391.27		$478.25
28800	C		Amputation of midfoot					
28805	C		Amputation thru metatarsal					
28810	T		Amputation toe & metatarsal	0055	20.0692	$1,190.97	$355.34	$238.19
28820	T		Amputation of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28825	T		Partial amputation of toe	0055	20.0692	$1,190.97	$355.34	$238.19
28899	T		Foot/toes surgery procedure	0043	1.7694	$105.00		$21.00
29000	S		Application of body cast	0058	1.0934	$64.89		$12.98
29010	S		Application of body cast	0426	2.1243	$126.06		$25.21
29015	S		Application of body cast	0426	2.1243	$126.06		$25.21
29020	S		Application of body cast	0058	1.0934	$64.89		$12.98
29025	S		Application of body cast	0058	1.0934	$64.89		$12.98
29035	S		Application of body cast	0426	2.1243	$126.06		$25.21
29040	S		Application of body cast	0058	1.0934	$64.89		$12.98
29044	S		Application of body cast	0426	2.1243	$126.06		$25.21
29046	S		Application of body cast	0426	2.1243	$126.06		$25.21
29049	S		Application of figure eight	0058	1.0934	$64.89		$12.98
29055	S		Application of shoulder cast	0426	2.1243	$126.06		$25.21
29058	S		Application of shoulder cast	0058	1.0934	$64.89		$12.98
29065	S		Application of long arm cast	0426	2.1243	$126.06		$25.21
29075	S		Application of forearm cast	0426	2.1243	$126.06		$25.21
29085	S		Apply hand/wrist cast	0058	1.0934	$64.89		$12.98
29086	S		Apply finger cast	0058	1.0934	$64.89		$12.98
29105	S		Apply long arm splint	0058	1.0934	$64.89		$12.98
29125	S		Apply forearm splint	0058	1.0934	$64.89		$12.98
29126	S		Apply forearm splint	0058	1.0934	$64.89		$12.98
29130	S		Application of finger splint	0058	1.0934	$64.89		$12.98

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
29131	S		Application of finger splint	0058	1.0934	$64.89		$12.98
29200	S		Strapping of chest	0058	1.0934	$64.89		$12.98
29220	S		Strapping of low back	0058	1.0934	$64.89		$12.98
29240	S		Strapping of shoulder	0058	1.0934	$64.89		$12.98
29260	S		Strapping of elbow or wrist	0058	1.0934	$64.89		$12.98
29280	S		Strapping of hand or finger	0058	1.0934	$64.89		$12.98
29305	S		Application of hip cast	0426	2.1243	$126.06		$25.21
29325	S		Application of hip casts	0426	2.1243	$126.06		$25.21
29345	S		Application of long leg cast	0426	2.1243	$126.06		$25.21
29355	S		Application of long leg cast	0426	2.1243	$126.06		$25.21
29358	S		Apply long leg cast brace	0426	2.1243	$126.06		$25.21
29365	S		Application of long leg cast	0426	2.1243	$126.06		$25.21
29405	S		Apply short leg cast	0426	2.1243	$126.06		$25.21
29425	S		Apply short leg cast	0426	2.1243	$126.06		$25.21
29435	S		Apply short leg cast	0426	2.1243	$126.06		$25.21
29440	S		Addition of walker to cast	0058	1.0934	$64.89		$12.98
29445	S		Apply rigid leg cast	0426	2.1243	$126.06		$25.21
29450	S		Application of leg cast	0058	1.0934	$64.89		$12.98
29505	S		Application, long leg splint	0058	1.0934	$64.89		$12.98
29515	S		Application lower leg splint	0058	1.0934	$64.89		$12.98
29520	S		Strapping of hip	0058	1.0934	$64.89		$12.98
29530	S		Strapping of knee	0058	1.0934	$64.89		$12.98
29540	S		Strapping of ankle	0058	1.0934	$64.89		$12.98
29550	S		Strapping of toes	0058	1.0934	$64.89		$12.98
29580	S		Application of paste boot	0058	1.0934	$64.89		$12.98
29590	S		Application of foot splint	0058	1.0934	$64.89		$12.98
29700	S		Removal/revision of cast	0058	1.0934	$64.89		$12.98
29705	S		Removal/revision of cast	0058	1.0934	$64.89		$12.98
29710	S		Removal/revision of cast	0426	2.1243	$126.06		$25.21
29715	S		Removal/revision of cast	0058	1.0934	$64.89		$12.98
29720	S		Repair of body cast	0058	1.0934	$64.89		$12.98
29730	S		Windowing of cast	0058	1.0934	$64.89		$12.98
29740	S		Wedging of cast	0058	1.0934	$64.89		$12.98
29750	S		Wedging of clubfoot cast	0058	1.0934	$64.89		$12.98
29799	S		Casting/strapping procedure	0058	1.0934	$64.89		$12.98
29800	T		Jaw arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29804	T		Jaw arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29805	T		Shoulder arthroscopy, dx	0041	28.1318	$1,669.43		$333.89
29806	T		Shoulder arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29807	T		Shoulder arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29819	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29820	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29821	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29822	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29823	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29824	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29825	T		Shoulder arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29826	T		Shoulder arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29827	T		Arthroscop rotator cuff repr	0042	43.9753	$2,609.63	$804.74	$521.93
29830	T		Elbow arthroscopy	0041	28.1318	$1,669.43		$333.89
29834	T		Elbow arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29835	T		Elbow arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29836	T		Elbow arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29837	T		Elbow arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29838	T		Elbow arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29840	T		Wrist arthroscopy	0041	28.1318	$1,669.43		$333.89
29843	T		Wrist arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29844	T		Wrist arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29845	T		Wrist arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29846	T		Wrist arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29847	T		Wrist arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29848	T		Wrist endoscopy/surgery	0041	28.1318	$1,669.43		$333.89
29850	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29851	T		Knee arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29855	T		Tibial arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29856	T		Tibial arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
29860	T		Hip arthroscopy, dx	0041	28.1318	$1,669.43		$333.89
29861	T		Hip arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29862	T		Hip arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29863	T		Hip arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29866	T		Autgrft implnt, knee w/scope	0042	43.9753	$2,609.63	$804.74	$521.93
29867	T		Allgrft implnt, knee w/scope	0042	43.9753	$2,609.63	$804.74	$521.93
29868	T		Meniscal trnspl, knee w/scpe	0042	43.9753	$2,609.63	$804.74	$521.93
29870	T		Knee arthroscopy, dx	0041	28.1318	$1,669.43		$333.89
29871	T		Knee arthroscopy/drainage	0041	28.1318	$1,669.43		$333.89
29873	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29874	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29875	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29876	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29877	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29879	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29880	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29881	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29882	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29883	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29884	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29885	T		Knee arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29886	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29887	T		Knee arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29888	T		Knee arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29889	T		Knee arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29891	T		Ankle arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29892	T		Ankle arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29893	T		Scope, plantar fasciotomy	0055	20.0692	$1,190.97	$355.34	$238.19
29894	T		Ankle arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29895	T		Ankle arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29897	T		Ankle arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29898	T		Ankle arthroscopy/surgery	0041	28.1318	$1,669.43		$333.89
29899	T		Ankle arthroscopy/surgery	0042	43.9753	$2,609.63	$804.74	$521.93
29900	T		Mcp joint arthroscopy, dx	0053	15.6795	$930.47	$253.49	$186.09
29901	T		Mcp joint arthroscopy, surg	0053	15.6795	$930.47	$253.49	$186.09
29902	T		Mcp joint arthroscopy, surg	0053	15.6795	$930.47	$253.49	$186.09
29999	T		Arthroscopy of joint	0041	28.1318	$1,669.43		$333.89
30000	T		Drainage of nose lesion	0251	2.0101	$119.29		$23.86
30020	T		Drainage of nose lesion	0251	2.0101	$119.29		$23.86
30100	T		Intranasal biopsy	0252	7.8673	$466.87	$113.41	$93.37
30110	T		Removal of nose polyp(s)	0253	16.1357	$957.54	$282.29	$191.51
30115	T		Removal of nose polyp(s)	0253	16.1357	$957.54	$282.29	$191.51
30117	T		Removal of intranasal lesion	0253	16.1357	$957.54	$282.29	$191.51
30118	T		Removal of intranasal lesion	0254	23.404	$1,388.86	$321.35	$277.77
30120	T		Revision of nose	0253	16.1357	$957.54	$282.29	$191.51
30124	T		Removal of nose lesion	0252	7.8673	$466.87	$113.41	$93.37
30125	T		Removal of nose lesion	0256	37.3204	$2,214.70		$442.94
30130	T		Removal of turbinate bones	0253	16.1357	$957.54	$282.29	$191.51
30140	T		Removal of turbinate bones	0254	23.404	$1,388.86	$321.35	$277.77
30150	T		Partial removal of nose	0256	37.3204	$2,214.70		$442.94
30160	T		Removal of nose	0256	37.3204	$2,214.70		$442.94
30200	T		Injection treatment of nose	0252	7.8673	$466.87	$113.41	$93.37
30210	T		Nasal sinus therapy	0252	7.8673	$466.87	$113.41	$93.37
30220	T		Insert nasal septal button	0252	7.8673	$466.87	$113.41	$93.37
30300	X		Remove nasal foreign body	0340	0.6384	$37.88		$7.58
30310	T		Remove nasal foreign body	0253	16.1357	$957.54	$282.29	$191.51
30320	T		Remove nasal foreign body	0253	16.1357	$957.54	$282.29	$191.51
30400	T		Reconstruction of nose	0256	37.3204	$2,214.70		$442.94
30410	T		Reconstruction of nose	0256	37.3204	$2,214.70		$442.94
30420	T		Reconstruction of nose	0256	37.3204	$2,214.70		$442.94
30430	T		Revision of nose	0254	23.404	$1,388.86	$321.35	$277.77
30435	T		Revision of nose	0256	37.3204	$2,214.70		$442.94
30450	T		Revision of nose	0256	37.3204	$2,214.70		$442.94
30460	T		Revision of nose	0256	37.3204	$2,214.70		$442.94
30462	T		Revision of nose	0256	37.3204	$2,214.70		$442.94
30465	T		Repair nasal stenosis	0256	37.3204	$2,214.70		$442.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
30520	T		Repair of nasal septum	0254	23.404	$1,388.86	$321.35	$277.77
30540	T		Repair nasal defect	0256	37.3204	$2,214.70		$442.94
30545	T		Repair nasal defect	0256	37.3204	$2,214.70		$442.94
30560	T		Release of nasal adhesions	0251	2.0101	$119.29		$23.86
30580	T		Repair upper jaw fistula	0256	37.3204	$2,214.70		$442.94
30600	T		Repair mouth/nose fistula	0256	37.3204	$2,214.70		$442.94
30620	T		Intranasal reconstruction	0256	37.3204	$2,214.70		$442.94
30630	T		Repair nasal septum defect	0254	23.404	$1,388.86	$321.35	$277.77
30801	T		Cauterization, inner nose	0252	7.8673	$466.87	$113.41	$93.37
30802	T		Cauterization, inner nose	0252	7.8673	$466.87	$113.41	$93.37
30901	T		Control of nosebleed	0250	1.2896	$76.53	$26.79	$15.31
30903	T		Control of nosebleed	0250	1.2896	$76.53	$26.79	$15.31
30905	T		Control of nosebleed	0250	1.2896	$76.53	$26.79	$15.31
30906	T		Repeat control of nosebleed	0250	1.2896	$76.53	$26.79	$15.31
30915	T		Ligation, nasal sinus artery	0091	28.9999	$1,720.94	$348.23	$344.19
30920	T		Ligation, upper jaw artery	0092	26.482	$1,571.52	$505.37	$314.30
30930	T		Therapy, fracture of nose	0253	16.1357	$957.54	$282.29	$191.51
30999	T		Nasal surgery procedure	0251	2.0101	$119.29		$23.86
31000	T		Irrigation, maxillary sinus	0251	2.0101	$119.29		$23.86
31002	T		Irrigation, sphenoid sinus	0252	7.8673	$466.87	$113.41	$93.37
31020	T		Exploration, maxillary sinus	0254	23.404	$1,388.86	$321.35	$277.77
31030	T		Exploration, maxillary sinus	0256	37.3204	$2,214.70		$442.94
31032	T		Explore sinus, remove polyps	0256	37.3204	$2,214.70		$442.94
31040	T		Exploration behind upper jaw	0254	23.404	$1,388.86	$321.35	$277.77
31050	T		Exploration, sphenoid sinus	0256	37.3204	$2,214.70		$442.94
31051	T		Sphenoid sinus surgery	0256	37.3204	$2,214.70		$442.94
31070	T		Exploration of frontal sinus	0254	23.404	$1,388.86	$321.35	$277.77
31075	T		Exploration of frontal sinus	0256	37.3204	$2,214.70		$442.94
31080	T		Removal of frontal sinus	0256	37.3204	$2,214.70		$442.94
31081	T		Removal of frontal sinus	0256	37.3204	$2,214.70		$442.94
31084	T		Removal of frontal sinus	0256	37.3204	$2,214.70		$442.94
31085	T		Removal of frontal sinus	0256	37.3204	$2,214.70		$442.94
31086	T		Removal of frontal sinus	0256	37.3204	$2,214.70		$442.94
31087	T		Removal of frontal sinus	0256	37.3204	$2,214.70		$442.94
31090	T		Exploration of sinuses	0256	37.3204	$2,214.70		$442.94
31200	T		Removal of ethmoid sinus	0256	37.3204	$2,214.70		$442.94
31201	T		Removal of ethmoid sinus	0256	37.3204	$2,214.70		$442.94
31205	T		Removal of ethmoid sinus	0256	37.3204	$2,214.70		$442.94
31225	C		Removal of upper jaw					
31230	C		Removal of upper jaw					
31231	T		Nasal endoscopy, dx	0072	1.4361	$85.22	$21.27	$17.04
31233	T		Nasal/sinus endoscopy, dx	0072	1.4361	$85.22	$21.27	$17.04
31235	T		Nasal/sinus endoscopy, dx	0074	15.7757	$936.18	$295.70	$187.24
31237	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31238	T		Nasal/sinus endoscopy, surg	0074	15.7757	$936.18	$295.70	$187.24
31239	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31240	T		Nasal/sinus endoscopy, surg	0074	15.7757	$936.18	$295.70	$187.24
31254	T		Revision of ethmoid sinus	0075	21.3426	$1,266.53	$445.92	$253.31
31255	T		Removal of ethmoid sinus	0075	21.3426	$1,266.53	$445.92	$253.31
31256	T		Exploration maxillary sinus	0075	21.3426	$1,266.53	$445.92	$253.31
31267	T		Endoscopy, maxillary sinus	0075	21.3426	$1,266.53	$445.92	$253.31
31276	T		Sinus endoscopy, surgical	0075	21.3426	$1,266.53	$445.92	$253.31
31287	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31288	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31290	C		Nasal/sinus endoscopy, surg					
31291	C		Nasal/sinus endoscopy, surg					
31292	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31293	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31294	T		Nasal/sinus endoscopy, surg	0075	21.3426	$1,266.53	$445.92	$253.31
31299	T		Sinus surgery procedure	0251	2.0101	$119.29		$23.86
31300	T		Removal of larynx lesion	0254	23.404	$1,388.86	$321.35	$277.77
31320	T		Diagnostic incision, larynx	0256	37.3204	$2,214.70		$442.94
31360	C		Removal of larynx					
31365	C		Removal of larynx					
31367	C		Partial removal of larynx					
31368	C		Partial removal of larynx					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
31370	C		Partial removal of larynx					
31375	C		Partial removal of larynx					
31380	C		Partial removal of larynx					
31382	C		Partial removal of larynx					
31390	C		Removal of larynx & pharynx					
31395	C		Reconstruct larynx & pharynx					
31400	T		Revision of larynx	0256	37.3204	$2,214.70		$442.94
31420	T		Removal of epiglottis	0256	37.3204	$2,214.70		$442.94
31500	S		Insert emergency airway	0094	2.5363	$150.51	$47.62	$30.10
31502	T		Change of windpipe airway	0121	2.2766	$135.10	$43.80	$27.02
31505	T		Diagnostic laryngoscopy	0071	0.7915	$46.97	$11.31	$9.39
31510	T		Laryngoscopy with biopsy	0074	15.7757	$936.18	$295.70	$187.24
31511	T		Remove foreign body, larynx	0072	1.4361	$85.22	$21.27	$17.04
31512	T		Removal of larynx lesion	0074	15.7757	$936.18	$295.70	$187.24
31513	T		Injection into vocal cord	0072	1.4361	$85.22	$21.27	$17.04
31515	T		Laryngoscopy for aspiration	0074	15.7757	$936.18	$295.70	$187.24
31520	T		Diagnostic laryngoscopy	0072	1.4361	$85.22	$21.27	$17.04
31525	T		Diagnostic laryngoscopy	0074	15.7757	$936.18	$295.70	$187.24
31526	T		Diagnostic laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31527	T		Laryngoscopy for treatment	0075	21.3426	$1,266.53	$445.92	$253.31
31528	T		Laryngoscopy and dilation	0074	15.7757	$936.18	$295.70	$187.24
31529	T		Laryngoscopy and dilation	0074	15.7757	$936.18	$295.70	$187.24
31530	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31531	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31535	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31536	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31540	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31541	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31545	T		Remove vc lesion w/scope	0075	21.3426	$1,266.53	$445.92	$253.31
31546	T		Remove vc lesion scope/graft	0075	21.3426	$1,266.53	$445.92	$253.31
31560	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31561	T		Operative laryngoscopy	0075	21.3426	$1,266.53	$445.92	$253.31
31570	T		Laryngoscopy with injection	0074	15.7757	$936.18	$295.70	$187.24
31571	T		Laryngoscopy with injection	0075	21.3426	$1,266.53	$445.92	$253.31
31575	T		Diagnostic laryngoscopy	0072	1.4361	$85.22	$21.27	$17.04
31576	T		Laryngoscopy with biopsy	0075	21.3426	$1,266.53	$445.92	$253.31
31577	T		Remove foreign body, larynx	0073	4.1609	$246.92	$73.38	$49.38
31578	T		Removal of larynx lesion	0075	21.3426	$1,266.53	$445.92	$253.31
31579	T		Diagnostic laryngoscopy	0073	4.1609	$246.92	$73.38	$49.38
31580	T		Revision of larynx	0256	37.3204	$2,214.70		$442.94
31582	T		Revision of larynx	0256	37.3204	$2,214.70		$442.94
31584	C		Treat larynx fracture					
31585	T		Treat larynx fracture	0253	16.1357	$957.54	$282.29	$191.51
31586	T		Treat larynx fracture	0256	37.3204	$2,214.70		$442.94
31587	C		Revision of larynx					
31588	T		Revision of larynx	0256	37.3204	$2,214.70		$442.94
31590	T		Reinnervate larynx	0256	37.3204	$2,214.70		$442.94
31595	T		Larynx nerve surgery	0256	37.3204	$2,214.70		$442.94
31599	T		Larynx surgery procedure	0251	2.0101	$119.29		$23.86
31600	T		Incision of windpipe	0254	23.404	$1,388.86	$321.35	$277.77
31601	T		Incision of windpipe	0254	23.404	$1,388.86	$321.35	$277.77
31603	T		Incision of windpipe	0252	7.8673	$466.87	$113.41	$93.37
31605	T		Incision of windpipe	0252	7.8673	$466.87	$113.41	$93.37
31610	T		Incision of windpipe	0254	23.404	$1,388.86	$321.35	$277.77
31611	T		Surgery/speech prosthesis	0254	23.404	$1,388.86	$321.35	$277.77
31612	T		Puncture/clear windpipe	0254	23.404	$1,388.86	$321.35	$277.77
31613	T		Repair windpipe opening	0254	23.404	$1,388.86	$321.35	$277.77
31614	T		Repair windpipe opening	0256	37.3204	$2,214.70		$442.94
31615	T		Visualization of windpipe	0076	9.4592	$561.34	$189.82	$112.27
31620	S		Endobronchial us add-on	0670	25.4131	$1,508.09	$472.46	$301.62
31622	T		Dx bronchoscope/wash	0076	9.4592	$561.34	$189.82	$112.27
31623	T		Dx bronchoscope/brush	0076	9.4592	$561.34	$189.82	$112.27
31624	T		Dx bronchoscope/lavage	0076	9.4592	$561.34	$189.82	$112.27
31625	T		Bronchoscopy w/biopsy(s)	0076	9.4592	$561.34	$189.82	$112.27
31628	T		Bronchoscopy/lung bx, each	0076	9.4592	$561.34	$189.82	$112.27
31629	T		Bronchoscopy/needle bx, each	0076	9.4592	$561.34	$189.82	$112.27

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
31630	T		Bronchoscopy dilate/fx repr	0415	22.0955	$1,311.21	$459.92	$262.24
31631	T		Bronchoscopy, dilate w/stent	0415	22.0955	$1,311.21	$459.92	$262.24
31632	T		Bronchoscopy/lung bx, add'l	0076	9.4592	$561.34	$189.82	$112.27
31633	T		Bronchoscopy/needle bx add'l	0076	9.4592	$561.34	$189.82	$112.27
31635	T		Bronchoscopy w/fb removal	0076	9.4592	$561.34	$189.82	$112.27
31636	T		Bronchoscopy, bronch stents	0415	22.0955	$1,311.21	$459.92	$262.24
31637	T		Bronchoscopy, stent add-on	0076	9.4592	$561.34	$189.82	$112.27
31638	T		Bronchoscopy, revise stent	0415	22.0955	$1,311.21	$459.92	$262.24
31640	T		Bronchoscopy w/tumor excise	0415	22.0955	$1,311.21	$459.92	$262.24
31641	T		Bronchoscopy, treat blockage	0415	22.0955	$1,311.21	$459.92	$262.24
31643	T		Diag bronchoscope/catheter	0076	9.4592	$561.34	$189.82	$112.27
31645	T		Bronchoscopy, clear airways	0076	9.4592	$561.34	$189.82	$112.27
31646	T		Bronchoscopy, reclear airway	0076	9.4592	$561.34	$189.82	$112.27
31656	T		Bronchoscopy, inj for x-ray	0076	9.4592	$561.34	$189.82	$112.27
31700	T		Insertion of airway catheter	0072	1.4361	$85.22	$21.27	$17.04
31708	N		Instill airway contrast dye					
31710	N		Insertion of airway catheter					
31715	N		Injection for bronchus x-ray					
31717	T		Bronchial brush biopsy	0073	4.1609	$246.92	$73.38	$49.38
31720	T		Clearance of airways	0071	0.7915	$46.97	$11.31	$9.39
31725	C		Clearance of airways					
31730	T		Intro, windpipe wire/tube	0073	4.1609	$246.92	$73.38	$49.38
31750	T		Repair of windpipe	0256	37.3204	$2,214.70		$442.94
31755	T		Repair of windpipe	0256	37.3204	$2,214.70		$442.94
31760	C		Repair of windpipe					
31766	C		Reconstruction of windpipe					
31770	C		Repair/graft of bronchus					
31775	C		Reconstruct bronchus					
31780	C		Reconstruct windpipe					
31781	C		Reconstruct windpipe					
31785	T		Remove windpipe lesion	0254	23.404	$1,388.86	$321.35	$277.77
31786	C		Remove windpipe lesion					
31800	C		Repair of windpipe injury					
31805	C		Repair of windpipe injury					
31820	T		Closure of windpipe lesion	0253	16.1357	$957.54	$282.29	$191.51
31825	T		Repair of windpipe defect	0254	23.404	$1,388.86	$321.35	$277.77
31830	T		Revise windpipe scar	0254	23.404	$1,388.86	$321.35	$277.77
31899	T		Airways surgical procedure	0076	9.4592	$561.34	$189.82	$112.27
32000	T		Drainage of chest	0070	3.2101	$190.50		$38.10
32002	T		Treatment of collapsed lung	0070	3.2101	$190.50		$38.10
32005	T		Treat lung lining chemically	0070	3.2101	$190.50		$38.10
32019	T		Insert pleural catheter	0070	3.2101	$190.50		$38.10
32020	T		Insertion of chest tube	0070	3.2101	$190.50		$38.10
32035	C		Exploration of chest					
32036	C		Exploration of chest					
32095	C		Biopsy through chest wall					
32100	C		Exploration/biopsy of chest					
32110	C		Explore/repair chest					
32120	C		Re-exploration of chest					
32124	C		Explore chest free adhesions					
32140	C		Removal of lung lesion(s)					
32141	C		Remove/treat lung lesions					
32150	C		Removal of lung lesion(s)					
32151	C		Remove lung foreign body					
32160	C		Open chest heart massage					
32200	C		Drain, open, lung lesion					
32201	T		Drain, percut, lung lesion	0070	3.2101	$190.50		$38.10
32215	C		Treat chest lining					
32220	C		Release of lung					
32225	C		Partial release of lung					
32310	C		Removal of chest lining					
32320	C		Free/remove chest lining					
32400	T		Needle biopsy chest lining	0685	6.0174	$357.09	$115.47	$71.42
32402	C		Open biopsy chest lining					
32405	T		Biopsy, lung or mediastinum	0685	6.0174	$357.09	$115.47	$71.42
32420	T		Puncture/clear lung	0070	3.2101	$190.50		$38.10

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
32440	C		Removal of lung					
32442	C		Sleeve pneumonectomy					
32445	C		Removal of lung					
32480	C		Partial removal of lung					
32482	C		Bilobectomy					
32484	C		Segmentectomy					
32486	C		Sleeve lobectomy					
32488	C		Completion pneumonectomy					
32491	C		Lung volume reduction					
32500	C		Partial removal of lung					
32501	C		Repair bronchus add-on					
32520	C		Remove lung & revise chest					
32522	C		Remove lung & revise chest					
32525	C		Remove lung & revise chest					
32540	C		Removal of lung lesion					
32601	T		Thoracoscopy, diagnostic	0069	30.6775	$1,820.49	$591.64	$364.10
32602	T		Thoracoscopy, diagnostic	0069	30.6775	$1,820.49	$591.64	$364.10
32603	T		Thoracoscopy, diagnostic	0069	30.6775	$1,820.49	$591.64	$364.10
32604	T		Thoracoscopy, diagnostic	0069	30.6775	$1,820.49	$591.64	$364.10
32605	T		Thoracoscopy, diagnostic	0069	30.6775	$1,820.49	$591.64	$364.10
32606	T		Thoracoscopy, diagnostic	0069	30.6775	$1,820.49	$591.64	$364.10
32650	C		Thoracoscopy, surgical					
32651	C		Thoracoscopy, surgical					
32652	C		Thoracoscopy, surgical					
32653	C		Thoracoscopy, surgical					
32654	C		Thoracoscopy, surgical					
32655	C		Thoracoscopy, surgical					
32656	C		Thoracoscopy, surgical					
32657	C		Thoracoscopy, surgical					
32658	C		Thoracoscopy, surgical					
32659	C		Thoracoscopy, surgical					
32660	C		Thoracoscopy, surgical					
32661	C		Thoracoscopy, surgical					
32662	C		Thoracoscopy, surgical					
32663	C		Thoracoscopy, surgical					
32664	C		Thoracoscopy, surgical					
32665	C		Thoracoscopy, surgical					
32800	C		Repair lung hernia					
32810	C		Close chest after drainage					
32815	C		Close bronchial fistula					
32820	C		Reconstruct injured chest					
32850	C		Donor pneumonectomy					
32851	C		Lung transplant, single					
32852	C		Lung transplant with bypass					
32853	C		Lung transplant, double					
32854	C		Lung transplant with bypass					
32855	C		Prepare donor lung, single					
32856	C		Prepare donor lung, double					
32900	C		Removal of rib(s)					
32905	C		Revise & repair chest wall					
32906	C		Revise & repair chest wall					
32940	C		Revision of lung					
32960	T		Therapeutic pneumothorax	0070	3.2101	$190.50		$38.10
32997	C		Total lung lavage					
32999	T		Chest surgery procedure	0070	3.2101	$190.50		$38.10
33010	T		Drainage of heart sac	0070	3.2101	$190.50		$38.10
33011	T		Repeat drainage of heart sac	0070	3.2101	$190.50		$38.10
33015	C		Incision of heart sac					
33020	C		Incision of heart sac					
33025	C		Incision of heart sac					
33030	C		Partial removal of heart sac					
33031	C		Partial removal of heart sac					
33050	C		Removal of heart sac lesion					
33120	C		Removal of heart lesion					
33130	C		Removal of heart lesion					
33140	C		Heart revascularize (tmr)					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33141	C		Heart tmr w/other procedure					
33200	C		Insertion of heart pacemaker					
33201	C		Insertion of heart pacemaker					
33206	T		Insertion of heart pacemaker	0089	105.6143	$6,267.47	$1,682.28	$1,253.49
33207	T		Insertion of heart pacemaker	0089	105.6143	$6,267.47	$1,682.28	$1,253.49
33208	T		Insertion of heart pacemaker	0655	133.7768	$7,938.72		$1,587.74
33210	T		Insertion of heart electrode	0106	45.4851	$2,699.22		$539.84
33211	T		Insertion of heart electrode	0106	45.4851	$2,699.22		$539.84
33212	T		Insertion of pulse generator	0090	89.1574	$5,290.87	$1,612.80	$1,058.17
33213	T		Insertion of pulse generator	0654	100.9294	$5,989.45		$1,197.89
33214	T		Upgrade of pacemaker system	0655	133.7768	$7,938.72		$1,587.74
33215	T		Reposition pacing-defib lead	0105	22.3685	$1,327.41	$370.40	$265.48
33216	T		Revise eltrd pacing-defib	0106	45.4851	$2,699.22		$539.84
33217	T		Insert lead pace-defib, dual	0106	45.4851	$2,699.22		$539.84
33218	T		Repair lead pace-defib, one	0106	45.4851	$2,699.22		$539.84
33220	T		Repair lead pace-defib, dual	0106	45.4851	$2,699.22		$539.84
33222	T		Revise pocket, acemaker	0027	18.4182	$1,092.99	$329.72	$218.60
33223	T		Revise pocket, pacing-defib	0027	18.4182	$1,092.99	$329.72	$218.60
33224	T		Insert pacing lead & connect	0418	109.3043	$6,486.45		$1,297.29
33225	T		L ventric pacing lead add-on	0418	109.3043	$6,486.45		$1,297.29
33226	T		Reposition l ventric lead	0105	22.3685	$1,327.41	$370.40	$265.48
33233	T		Removal of pacemaker system	0105	22.3685	$1,327.41	$370.40	$265.48
33234	T		Removal of pacemaker system	0105	22.3685	$1,327.41	$370.40	$265.48
33235	T		Removal pacemaker electrode	0105	22.3685	$1,327.41	$370.40	$265.48
33236	C		Remove electrode/thoracotomy					
33237	C		Remove electrode/thoracotomy					
33238	C		Remove electrode/thoracotomy					
33240	B		Insert pulse generator					
33241	T		Remove pulse generator	0105	22.3685	$1,327.41	$370.40	$265.48
33243	C		Remove eltrd/thoracotomy					
33244	T		Remove eltrd, transven	0105	22.3685	$1,327.41	$370.40	$265.48
33245	C		Insert epic eltrd pace-defib					
33246	C		Insert epic eltrd/generator					
33249	B		Eltrd/insert pace-defib					
33250	C		Ablate heart dysrhythm focus					
33251	C		Ablate heart dysrhythm focus					
33253	C		Reconstruct atria					
33261	C		Ablate heart dysrhythm focus					
33282	S		Implant pat-active ht record	0680	62.9082	$3,733.16		$746.63
33284	T		Remove pat-active ht record	0109	11.0433	$655.34	$131.49	$131.07
33300	C		Repair of heart wound					
33305	C		Repair of heart wound					
33310	C		Exploratory heart surgery					
33315	C		Exploratory heart surgery					
33320	C		Repair major blood vessel(s)					
33321	C		Repair major vessel					
33322	C		Repair major blood vessel(s)					
33330	C		Insert major vessel graft					
33332	C		Insert major vessel graft					
33335	C		Insert major vessel graft					
33400	C		Repair of aortic valve					
33401	C		Valvuloplasty, open					
33403	C		Valvuloplasty, w/cp bypass					
33404	C		Prepare heart-aorta conduit					
33405	C		Replacement of aortic valve					
33406	C		Replacement of aortic valve					
33410	C		Replacement of aortic valve					
33411	C		Replacement of aortic valve					
33412	C		Replacement of aortic valve					
33413	C		Replacement of aortic valve					
33414	C		Repair of aortic valve					
33415	C		Revision, subvalvular tissue					
33416	C		Revise ventricle muscle					
33417	C		Repair of aortic valve					
33420	C		Revision of mitral valve					
33422	C		Revision of mitral valve					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33425	C		Repair of mitral valve					
33426	C		Repair of mitral valve					
33427	C		Repair of mitral valve					
33430	C		Replacement of mitral valve					
33460	C		Revision of tricuspid valve					
33463	C		Valvuloplasty, tricuspid					
33464	C		Valvuloplasty, tricuspid					
33465	C		Replace tricuspid valve					
33468	C		Revision of tricuspid valve					
33470	C		Revision of pulmonary valve					
33471	C		Valvotomy, pulmonary valve					
33472	C		Revision of pulmonary valve					
33474	C		Revision of pulmonary valve					
33475	C		Replacement, pulmonary valve					
33476	C		Revision of heart chamber					
33478	C		Revision of heart chamber					
33496	C		Repair, prosth valve clot					
33500	C		Repair heart vessel fistula					
33501	C		Repair heart vessel fistula					
33502	C		Coronary artery correction					
33503	C		Coronary artery graft					
33504	C		Coronary artery graft					
33505	C		Repair artery w/tunnel					
33506	C		Repair artery, translocation					
33508	N		Endoscopic vein harvest					
33510	C		CABG, vein, single					
33511	C		CABG, vein, two					
33512	C		CABG, vein, three					
33513	C		CABG, vein, four					
33514	C		CABG, vein, five					
33516	C		Cabg, vein, six or more					
33517	C		CABG, artery-vein, single					
33518	C		CABG, artery-vein, two					
33519	C		CABG, artery-vein, three					
33521	C		CABG, artery-vein, four					
33522	C		CABG, artery-vein, five					
33523	C		Cabg, art-vein, six or more					
33530	C		Coronary artery, bypass/reop					
33533	C		CABG, arterial, single					
33534	C		CABG, arterial, two					
33535	C		CABG, arterial, three					
33536	C		Cabg, arterial, four or more					
33542	C		Removal of heart lesion					
33545	C		Repair of heart damage					
33572	C		Open coronary endarterectomy					
33600	C		Closure of valve					
33602	C		Closure of valve					
33606	C		Anastomosis/artery-aorta					
33608	C		Repair anomaly w/conduit					
33610	C		Repair by enlargement					
33611	C		Repair double ventricle					
33612	C		Repair double ventricle					
33615	C		Repair, modified fontan					
33617	C		Repair single ventricle					
33619	C		Repair single ventricle					
33641	C		Repair heart septum defect					
33645	C		Revision of heart veins					
33647	C		Repair heart septum defects					
33660	C		Repair of heart defects					
33665	C		Repair of heart defects					
33670	C		Repair of heart chambers					
33681	C		Repair heart septum defect					
33684	C		Repair heart septum defect					
33688	C		Repair heart septum defect					
33690	C		Reinforce pulmonary artery					
33692	C		Repair of heart defects					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33694	C		Repair of heart defects					
33697	C		Repair of heart defects					
33702	C		Repair of heart defects					
33710	C		Repair of heart defects					
33720	C		Repair of heart defect					
33722	C		Repair of heart defect					
33730	C		Repair heart-vein defect(s)					
33732	C		Repair heart-vein defect					
33735	C		Revision of heart chamber					
33736	C		Revision of heart chamber					
33737	C		Revision of heart chamber					
33750	C		Major vessel shunt					
33755	C		Major vessel shunt					
33762	C		Major vessel shunt					
33764	C		Major vessel shunt & graft					
33766	C		Major vessel shunt					
33767	C		Major vessel shunt					
33770	C		Repair great vessels defect					
33771	C		Repair great vessels defect					
33774	C		Repair great vessels defect					
33775	C		Repair great vessels defect					
33776	C		Repair great vessels defect					
33777	C		Repair great vessels defect					
33778	C		Repair great vessels defect					
33779	C		Repair great vessels defect					
33780	C		Repair great vessels defect					
33781	C		Repair great vessels defect					
33786	C		Repair arterial trunk					
33788	C		Revision of pulmonary artery					
33800	C		Aortic suspension					
33802	C		Repair vessel defect					
33803	C		Repair vessel defect					
33813	C		Repair septal defect					
33814	C		Repair septal defect					
33820	C		Revise major vessel					
33822	C		Revise major vessel					
33824	C		Revise major vessel					
33840	C		Remove aorta constriction					
33845	C		Remove aorta constriction					
33851	C		Remove aorta constriction					
33852	C		Repair septal defect					
33853	C		Repair septal defect					
33860	C		Ascending aortic graft					
33861	C		Ascending aortic graft					
33863	C		Ascending aortic graft					
33870	C		Transverse aortic arch graft					
33875	C		Thoracic aortic graft					
33877	C		Thoracoabdominal graft					
33910	C		Remove lung artery emboli					
33915	C		Remove lung artery emboli					
33916	C		Surgery of great vessel					
33917	C		Repair pulmonary artery					
33918	C		Repair pulmonary atresia					
33919	C		Repair pulmonary atresia					
33920	C		Repair pulmonary atresia					
33922	C		Transect pulmonary artery					
33924	C		Remove pulmonary shunt					
33930	C		Removal of donor heart/lung					
33933	C		Prepare donor heart/lung					
33935	C		Transplantation, heart/lung					
33940	C		Removal of donor heart					
33944	C		Prepare donor heart					
33945	C		Transplantation of heart					
33960	C		External circulation assist					
33961	C		External circulation assist					
33967	C		Insert ia percut device					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33968	C		Remove aortic assist device					
33970	C		Aortic circulation assist					
33971	C		Aortic circulation assist					
33973	C		Insert balloon device					
33974	C		Remove intra-aortic balloon					
33975	C		Implant ventricular device					
33976	C		Implant ventricular device					
33977	C		Remove ventricular device					
33978	C		Remove ventricular device					
33979	C		Insert intracorporeal device					
33980	C		Remove intracorporeal device					
33999	T		Cardiac surgery procedure	0070	3.2101	$190.50		$38.10
34001	C		Removal of artery clot					
34051	C		Removal of artery clot					
34101	T		Removal of artery clot	0088	36.5617	$2,169.68	$655.22	$433.94
34111	T		Removal of arm artery clot	0088	36.5617	$2,169.68	$655.22	$433.94
34151	C		Removal of artery clot					
34201	T		Removal of artery clot	0088	36.5617	$2,169.68	$655.22	$433.94
34203	T		Removal of leg artery clot	0088	36.5617	$2,169.68	$655.22	$433.94
34401	C		Removal of vein clot					
34421	T		Removal of vein clot	0088	36.5617	$2,169.68	$655.22	$433.94
34451	C		Removal of vein clot					
34471	T		Removal of vein clot	0088	36.5617	$2,169.68	$655.22	$433.94
34490	T		Removal of vein clot	0088	36.5617	$2,169.68	$655.22	$433.94
34501	T		Repair valve, femoral vein	0088	36.5617	$2,169.68	$655.22	$433.94
34502	C		Reconstruct vena cava					
34510	T		Transposition of vein valve	0088	36.5617	$2,169.68	$655.22	$433.94
34520	T		Cross-over vein graft	0088	36.5617	$2,169.68	$655.22	$433.94
34530	T		Leg vein fusion	0088	36.5617	$2,169.68	$655.22	$433.94
34800	C		Endovasc abdo repair w/tube					
34802	C		Endovasc abdo repr w/device					
34803	C		Endovas aaa repr w/3-p part					
34804	C		Endovasc abdo repr w/device					
34805	C		Endovasc abdo repair w/pros					
34808	C		Endovasc abdo occlud device					
34812	C		Xpose for endoprosth, aortic					
34813	C		Femoral endovas graft add-on					
34820	C		Xpose for endoprosth, iliac					
34825	C		Endovasc extend prosth, init					
34826	C		Endovasc exten prosth, add'l					
34830	C		Open aortic tube prosth repr					
34831	C		Open aortoiliac prosth repr					
34832	C		Open aortofemor prosth repr					
34833	C		Xpose for endoprosth, iliac					
34834	C		Xpose, endoprosth, brachial					
34900	C		Endovasc iliac repr w/graft					
35001	C		Repair defect of artery					
35002	C		Repair artery rupture, neck					
35005	C		Repair defect of artery					
35011	T		Repair defect of artery	0653	30.5339	$1,811.97		$362.39
35013	C		Repair artery rupture, arm					
35021	C		Repair defect of artery					
35022	C		Repair artery rupture, chest					
35045	C		Repair defect of arm artery					
35081	C		Repair defect of artery					
35082	C		Repair artery rupture, aorta					
35091	C		Repair defect of artery					
35092	C		Repair artery rupture, aorta					
35102	C		Repair defect of artery					
35103	C		Repair artery rupture, groin					
35111	C		Repair defect of artery					
35112	C		Repair artery rupture,spleen					
35121	C		Repair defect of artery					
35122	C		Repair artery rupture, belly					
35131	C		Repair defect of artery					
35132	C		Repair artery rupture, groin					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35141	C		Repair defect of artery					
35142	C		Repair artery rupture, thigh					
35151	C		Repair defect of artery					
35152	C		Repair artery rupture, knee					
35180	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35182	C		Repair blood vessel lesion					
35184	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35188	T		Repair blood vessel lesion	0088	36.5617	$2,169.68	$655.22	$433.94
35189	C		Repair blood vessel lesion					
35190	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35201	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35206	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35207	T		Repair blood vessel lesion	0088	36.5617	$2,169.68	$655.22	$433.94
35211	C		Repair blood vessel lesion					
35216	C		Repair blood vessel lesion					
35221	C		Repair blood vessel lesion					
35226	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35231	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35236	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35241	C		Repair blood vessel lesion					
35246	C		Repair blood vessel lesion					
35251	C		Repair blood vessel lesion					
35256	T		Repair blood vessel lesion	0093	23.4516	$1,391.69		$278.34
35261	T		Repair blood vessel lesion	0653	30.5339	$1,811.97		$362.39
35266	T		Repair blood vessel lesion	0653	30.5339	$1,811.97		$362.39
35271	C		Repair blood vessel lesion					
35276	C		Repair blood vessel lesion					
35281	C		Repair blood vessel lesion					
35286	T		Repair blood vessel lesion	0653	30.5339	$1,811.97		$362.39
35301	C		Rechanneling of artery					
35311	C		Rechanneling of artery					
35321	T		Rechanneling of artery	0093	23.4516	$1,391.69		$278.34
35331	C		Rechanneling of artery					
35341	C		Rechanneling of artery					
35351	C		Rechanneling of artery					
35355	C		Rechanneling of artery					
35361	C		Rechanneling of artery					
35363	C		Rechanneling of artery					
35371	C		Rechanneling of artery					
35372	C		Rechanneling of artery					
35381	C		Rechanneling of artery					
35390	C		Reoperation, carotid add-on					
35400	C		Angioscopy					
35450	C		Repair arterial blockage					
35452	C		Repair arterial blockage					
35454	C		Repair arterial blockage					
35456	C		Repair arterial blockage					
35458	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35459	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35460	T		Repair venous blockage	0081	34.4473	$2,044.21		$408.84
35470	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35471	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35472	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35473	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35474	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35475	T		Repair arterial blockage	0081	34.4473	$2,044.21		$408.84
35476	T		Repair venous blockage	0081	34.4473	$2,044.21		$408.84
35480	C		Atherectomy, open					
35481	C		Atherectomy, open					
35482	C		Atherectomy, open					
35483	C		Atherectomy, open					
35484	T		Atherectomy, open	0081	34.4473	$2,044.21		$408.84
35485	T		Atherectomy, open	0081	34.4473	$2,044.21		$408.84
35490	T		Atherectomy, percutaneous	0081	34.4473	$2,044.21		$408.84
35491	T		Atherectomy, percutaneous	0081	34.4473	$2,044.21		$408.84
35492	T		Atherectomy, percutaneous	0081	34.4473	$2,044.21		$408.84

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35493	T		Atherectomy, percutaneous	0081	34.4473	$2,044.21		$408.84
35494	T		Atherectomy, percutaneous	0081	34.4473	$2,044.21		$408.84
35495	T		Atherectomy, percutaneous	0081	34.4473	$2,044.21		$408.84
35500	T		Harvest vein for bypass	0081	34.4473	$2,044.21		$408.84
35501	C		Artery bypass graft					
35506	C		Artery bypass graft					
35507	C		Artery bypass graft					
35508	C		Artery bypass graft					
35509	C		Artery bypass graft					
35510	C		Artery bypass graft					
35511	C		Artery bypass graft					
35512	C		Artery bypass graft					
35515	C		Artery bypass graft					
35516	C		Artery bypass graft					
35518	C		Artery bypass graft					
35521	C		Artery bypass graft					
35522	C		Artery bypass graft					
35525	C		Artery bypass graft					
35526	C		Artery bypass graft					
35531	C		Artery bypass graft					
35533	C		Artery bypass graft					
35536	C		Artery bypass graft					
35541	C		Artery bypass graft					
35546	C		Artery bypass graft					
35548	C		Artery bypass graft					
35549	C		Artery bypass graft					
35551	C		Artery bypass graft					
35556	C		Artery bypass graft					
35558	C		Artery bypass graft					
35560	C		Artery bypass graft					
35563	C		Artery bypass graft					
35565	C		Artery bypass graft					
35566	C		Artery bypass graft					
35571	C		Artery bypass graft					
35572	N		Harvest femoropopliteal vein					
35583	C		Vein bypass graft					
35585	C		Vein bypass graft					
35587	C		Vein bypass graft					
35600	C		Harvest artery for cabg					
35601	C		Artery bypass graft					
35606	C		Artery bypass graft					
35612	C		Artery bypass graft					
35616	C		Artery bypass graft					
35621	C		Artery bypass graft					
35623	C		Bypass graft, not vein					
35626	C		Artery bypass graft					
35631	C		Artery bypass graft					
35636	C		Artery bypass graft					
35641	C		Artery bypass graft					
35642	C		Artery bypass graft					
35645	C		Artery bypass graft					
35646	C		Artery bypass graft					
35647	C		Artery bypass graft					
35650	C		Artery bypass graft					
35651	C		Artery bypass graft					
35654	C		Artery bypass graft					
35656	C		Artery bypass graft					
35661	C		Artery bypass graft					
35663	C		Artery bypass graft					
35665	C		Artery bypass graft					
35666	C		Artery bypass graft					
35671	C		Artery bypass graft					
35681	C		Composite bypass graft					
35682	C		Composite bypass graft					
35683	C		Composite bypass graft					
35685	T		Bypass graft patency/patch	0093	23.4516	$1,391.69		$278.34

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35686	T		Bypass graft/av fist patency	0093	23.4516	$1,391.69		$278.34
35691	C		Arterial transposition					
35693	C		Arterial transposition					
35694	C		Arterial transposition					
35695	C		Arterial transposition					
35697	C		Reimplant artery each					
35700	C		Reoperation, bypass graft					
35701	C		Exploration, carotid artery					
35721	C		Exploration, femoral artery					
35741	C		Exploration popliteal artery					
35761	T		Exploration of artery/vein	0115	31.4727	$1,867.68	$459.35	$373.54
35800	C		Explore neck vessels					
35820	C		Explore chest vessels					
35840	C		Explore abdominal vessels					
35860	T		Explore limb vessels	0093	23.4516	$1,391.69		$278.34
35870	C		Repair vessel graft defect					
35875	T		Removal of clot in graft	0088	36.5617	$2,169.68	$655.22	$433.94
35876	T		Removal of clot in graft	0088	36.5617	$2,169.68	$655.22	$433.94
35879	T		Revise graft w/vein	0088	36.5617	$2,169.68	$655.22	$433.94
35881	T		Revise graft w/vein	0088	36.5617	$2,169.68	$655.22	$433.94
35901	C		Excision, graft, neck					
35903	T		Excision, graft, extremity	0115	31.4727	$1,867.68	$459.35	$373.54
35905	C		Excision, graft, thorax					
35907	C		Excision, graft, abdomen					
36000	N		Place needle in vein					
36002	S		Pseudoaneurysm injection trt	0267	2.6327	$156.23	$62.18	$31.25
36005	N		Injection ext venography					
36010	N		Place catheter in vein					
36011	N		Place catheter in vein					
36012	N		Place catheter in vein					
36013	N		Place catheter in artery					
36014	N		Place catheter in artery					
36015	N		Place catheter in artery					
36100	N		Establish access to artery					
36120	N		Establish access to artery					
36140	N		Establish access to artery					
36145	N		Artery to vein shunt					
36160	N		Establish access to aorta					
36200	N		Place catheter in aorta					
36215	N		Place catheter in artery					
36216	N		Place catheter in artery					
36217	N		Place catheter in artery					
36218	N		Place catheter in artery					
36245	N		Place catheter in artery					
36246	N		Place catheter in artery					
36247	N		Place catheter in artery					
36248	N		Place catheter in artery					
36260	T		Insertion of infusion pump	0623	27.1105	$1,608.82		$321.76
36261	T		Revision of infusion pump	0623	27.1105	$1,608.82		$321.76
36262	T		Removal of infusion pump	0622	21.2671	$1,262.05		$252.41
36299	N		Vessel injection procedure					
36400	N		Bl draw < 3 yrs fem/jugular					
36405	N		Bl draw < 3 yrs scalp vein					
36406	N		Bl draw < 3 yrs other vein					
36410	N		Non-routine bl draw > 3 yrs					
36415	A		Drawing blood					
36416	N		Capillary blood draw					
36420	T		Vein access cutdown < 1 yr	0035	0.7158	$42.48		$8.50
36425	T		Vein access cutdown > 1 yr	0035	0.7158	$42.48		$8.50
36430	S		Blood transfusion service	0110	3.6594	$217.16		$43.43
36440	S		Bl push transfuse, 2 yr or <	0110	3.6594	$217.16		$43.43
36450	S		Bl exchange/transfuse, nb	0110	3.6594	$217.16		$43.43
36455	S		Bl exchange/transfuse non-nb	0110	3.6594	$217.16		$43.43
36460	S		Transfusion service, fetal	0110	3.6594	$217.16		$43.43
36468	T		Injection(s), spider veins	0098	1.1346	$67.33		$13.47
36469	T		Injection(s), spider veins	0098	1.1346	$67.33		$13.47

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
36470	T		Injection therapy of vein	0098	1.1346	$67.33		$13.47
36471	T		Injection therapy of veins	0098	1.1346	$67.33		$13.47
36475	T		Endovenous rf, 1st vein	0092	26.482	$1,571.52	$505.37	$314.30
36476	T		Endovenous rf, vein add-on	0092	26.482	$1,571.52	$505.37	$314.30
36478	T		Endovenous laser, 1st vein	0092	26.482	$1,571.52	$505.37	$314.30
36479	T		Endovenous laser vein addon	0092	26.482	$1,571.52	$505.37	$314.30
36481	N		Insertion of catheter, vein					
36500	N		Insertion of catheter, vein					
36510	N		Insertion of catheter, vein					
36511	S		Apheresis wbc	0111	12.3956	$735.59	$200.18	$147.12
36512	S		Apheresis rbc	0111	12.3956	$735.59	$200.18	$147.12
36513	S		Apheresis platelets	0111	12.3956	$735.59	$200.18	$147.12
36514	S		Apheresis plasma	0111	12.3956	$735.59	$200.18	$147.12
36515	S		Apheresis, adsorp/reinfuse	0112	26.7948	$1,590.08	$438.94	$318.02
36516	S		Apheresis, selective	0112	26.7948	$1,590.08	$438.94	$318.02
36522	S		Photopheresis	0112	26.7948	$1,590.08	$438.94	$318.02
36540	N		Collect blood venous device					
36550	T		Declot vascular device	0676	2.4105	$143.05		$28.61
36555	T		Insert non-tunnel cv cath	0621	8.2986	$492.46		$98.49
36556	T		Insert non-tunnel cv cath	0621	8.2986	$492.46		$98.49
36557	T		Insert tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36558	T		Insert tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36560	T		Insert tunneled cv cath	0623	27.1105	$1,608.82		$321.76
36561	T		Insert tunneled cv cath	0623	27.1105	$1,608.82		$321.76
36563	T		Insert tunneled cv cath	0623	27.1105	$1,608.82		$321.76
36565	T		Insert tunneled cv cath	0623	27.1105	$1,608.82		$321.76
36566	T		Insert tunneled cv cath	1564		$4,750.00		$950.00
36568	T		Insert tunneled cv cath	0621	8.2986	$492.46		$98.49
36569	T		Insert tunneled cv cath	0621	8.2986	$492.46		$98.49
36570	T		Insert tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36571	T		Insert tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36575	T		Repair tunneled cv cath	0621	8.2986	$492.46		$98.49
36576	T		Repair tunneled cv cath	0621	8.2986	$492.46		$98.49
36578	T		Replace tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36580	T		Replace tunneled cv cath	0621	8.2986	$492.46		$98.49
36581	T		Replace tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36582	T		Replace tunneled cv cath	0623	27.1105	$1,608.82		$321.76
36583	T		Replace tunneled cv cath	0623	27.1105	$1,608.82		$321.76
36584	T		Replace tunneled cv cath	0621	8.2986	$492.46		$98.49
36585	T		Replace tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36589	T		Removal tunneled cv cath	0621	8.2986	$492.46		$98.49
36590	T		Removal tunneled cv cath	0621	8.2986	$492.46		$98.49
36595	T		Mech remov tunneled cv cath	0622	21.2671	$1,262.05		$252.41
36596	T		Mech remov tunneled cv cath	0621	8.2986	$492.46		$98.49
36597	T		Reposition venous catheter	0621	8.2986	$492.46		$98.49
36600	N		Withdrawal of arterial blood					
36620	N		Insertion catheter, artery					
36625	N		Insertion catheter, artery					
36640	T		Insertion catheter, artery	0623	27.1105	$1,608.82		$321.76
36660	C		Insertion catheter, artery					
36680	T		Insert needle, bone cavity	0002	0.9559	$56.73		$11.35
36800	T		Insertion of cannula	0115	31.4727	$1,867.68	$459.35	$373.54
36810	T		Insertion of cannula	0115	31.4727	$1,867.68	$459.35	$373.54
36815	T		Insertion of cannula	0115	31.4727	$1,867.68	$459.35	$373.54
36818	T		Av fuse, uppr arm, cephalic	0088	36.5617	$2,169.68	$655.22	$433.94
36819	T		Av fusion/uppr arm vein	0088	36.5617	$2,169.68	$655.22	$433.94
36820	T		Av fusion/forearm vein	0088	36.5617	$2,169.68	$655.22	$433.94
36821	T		Av fusion direct any site	0088	36.5617	$2,169.68	$655.22	$433.94
36822	C		Insertion of cannula(s)					
36823	C		Insertion of cannula(s)					
36825	T		Artery-vein autograft	0088	36.5617	$2,169.68	$655.22	$433.94
36830	T		Artery-vein graft	0088	36.5617	$2,169.68	$655.22	$433.94
36831	T		Open thrombect av fistula	0088	36.5617	$2,169.68	$655.22	$433.94
36832	T		Av fistula revision, open	0088	36.5617	$2,169.68	$655.22	$433.94
36833	T		Av fistula revision	0088	36.5617	$2,169.68	$655.22	$433.94
36834	T		Repair A-V aneurysm	0088	36.5617	$2,169.68	$655.22	$433.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
36835	T		Artery to vein shunt	0115	31.4727	$1,867.68	$459.35	$373.54
36838	T		Dist revas ligation, hemo	0088	36.5617	$2,169.68	$655.22	$433.94
36860	T		External cannula declotting	0676	2.4105	$143.05		$28.61
36861	T		Cannula declotting	0115	31.4727	$1,867.68	$459.35	$373.54
36870	T		Percut thrombect av fistula	0653	30.5339	$1,811.97		$362.39
37140	C		Revision of circulation					
37145	C		Revision of circulation					
37160	C		Revision of circulation					
37180	C		Revision of circulation					
37181	C		Splice spleen/kidney veins					
37182	C		Insert hepatic shunt (tips)					
37183	T		Remove hepatic shunt (tips)	0229	64.4545	$3,824.92	$771.23	$764.98
37195	T		Thrombolytic therapy, stroke	0676	2.4105	$143.05		$28.61
37200	T		Transcatheter biopsy	0685	6.0174	$357.09	$115.47	$71.42
37201	T		Transcatheter therapy infuse	0676	2.4105	$143.05		$28.61
37202	T		Transcatheter therapy infuse	0676	2.4105	$143.05		$28.61
37203	T		Transcatheter retrieval	0103	14.7142	$873.18	$223.63	$174.64
37204	T		Transcatheter occlusion	0115	31.4727	$1,867.68	$459.35	$373.54
37205	T		Transcatheter stent	0229	64.4545	$3,824.92	$771.23	$764.98
37206	T		Transcatheter stent add-on	0229	64.4545	$3,824.92	$771.23	$764.98
37207	T		Transcatheter stent	0229	64.4545	$3,824.92	$771.23	$764.98
37208	T		Transcatheter stent add-on	0229	64.4545	$3,824.92	$771.23	$764.98
37209	T		Exchange arterial catheter	0103	14.7142	$873.18	$223.63	$174.64
37215	C		Transcath stent, cca w/eps					
37216	C		Transcath stent, cca w/o eps					
37250	S		Iv us first vessel add-on	0416	19.5542	$1,160.40		$232.08
37251	S		Iv us each add vessel add-on	0416	19.5542	$1,160.40		$232.08
37500	T		Endoscopy ligate perf veins	0092	26.482	$1,571.52	$505.37	$314.30
37501	T		Vascular endoscopy procedure	0092	26.482	$1,571.52	$505.37	$314.30
37565	T		Ligation of neck vein	0093	23.4516	$1,391.69		$278.34
37600	T		Ligation of neck artery	0093	23.4516	$1,391.69		$278.34
37605	T		Ligation of neck artery	0091	28.9999	$1,720.94	$348.23	$344.19
37606	T		Ligation of neck artery	0091	28.9999	$1,720.94	$348.23	$344.19
37607	T		Ligation of a-v fistula	0092	26.482	$1,571.52	$505.37	$314.30
37609	T		Temporal artery procedure	0021	14.9776	$888.82	$219.48	$177.76
37615	T		Ligation of neck artery	0091	28.9999	$1,720.94	$348.23	$344.19
37616	C		Ligation of chest artery					
37617	C		Ligation of abdomen artery					
37618	C		Ligation of extremity artery					
37620	T		Revision of major vein	0091	28.9999	$1,720.94	$348.23	$344.19
37650	T		Revision of major vein	0091	28.9999	$1,720.94	$348.23	$344.19
37660	C		Revision of major vein					
37700	T		Revise leg vein	0091	28.9999	$1,720.94	$348.23	$344.19
37720	T		Removal of leg vein	0092	26.482	$1,571.52	$505.37	$314.30
37730	T		Removal of leg veins	0092	26.482	$1,571.52	$505.37	$314.30
37735	T		Removal of leg veins/lesion	0092	26.482	$1,571.52	$505.37	$314.30
37760	T		Revision of leg veins	0091	28.9999	$1,720.94	$348.23	$344.19
37765	T		Phleb veins - extrem - to 20	0091	28.9999	$1,720.94	$348.23	$344.19
37766	T		Phleb veins - extrem 20+	0091	28.9999	$1,720.94	$348.23	$344.19
37780	T		Revision of leg vein	0091	28.9999	$1,720.94	$348.23	$344.19
37785	T		Ligate/divide/excise vein	0091	28.9999	$1,720.94	$348.23	$344.19
37788	C		Revascularization, penis					
37790	T		Penile venous occlusion	0181	30.8663	$1,831.70	$621.82	$366.34
37799	T		Vascular surgery procedure	0103	14.7142	$873.18	$223.63	$174.64
38100	C		Removal of spleen, total					
38101	C		Removal of spleen, partial					
38102	C		Removal of spleen, total					
38115	C		Repair of ruptured spleen					
38120	T		Laparoscopy, splenectomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
38129	T		Laparoscope proc, spleen	0130	31.9271	$1,894.65	$659.53	$378.93
38200	N		Injection for spleen x-ray					
38204	E		Bl donor search management					
38205	S		Harvest allogenic stem cells	0111	12.3956	$735.59	$200.18	$147.12
38206	S		Harvest auto stem cells	0111	12.3956	$735.59	$200.18	$147.12
38207	E		Cryopreserve stem cells					
38208	E		Thaw preserved stem cells					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
38209	E		Wash harvest stem cells					
38210	E		T-cell depletion of harvest					
38211	E		Tumor cell deplete of harvst					
38212	E		Rbc depletion of harvest					
38213	E		Platelet deplete of harvest					
38214	E		Volume deplete of harvest					
38215	E		Harvest stem cell concentrte					
38220	T		Bone marrow aspiration	0003	2.653	$157.44		$31.49
38221	T		Bone marrow biopsy	0003	2.653	$157.44		$31.49
38230	S		Bone marrow collection	0111	12.3956	$735.59	$200.18	$147.12
38240	S		Bone marrow/stem transplant	0123	22.9902	$1,364.31		$272.86
38241	S		Bone marrow/stem transplant	0123	22.9902	$1,364.31		$272.86
38242	S		Lymphocyte infuse transplant	0111	12.3956	$735.59	$200.18	$147.12
38300	T		Drainage, lymph node lesion	0007	11.4501	$679.48		$135.90
38305	T		Drainage, lymph node lesion	0008	16.4989	$979.09		$195.82
38308	T		Incision of lymph channels	0113	21.4653	$1,273.82		$254.76
38380	C		Thoracic duct procedure					
38381	C		Thoracic duct procedure					
38382	C		Thoracic duct procedure					
38500	T		Biopsy/removal, lymph nodes	0113	21.4653	$1,273.82		$254.76
38505	T		Needle biopsy, lymph nodes	0005	3.5994	$213.60	$71.59	$42.72
38510	T		Biopsy/removal, lymph nodes	0113	21.4653	$1,273.82		$254.76
38520	T		Biopsy/removal, lymph nodes	0113	21.4653	$1,273.82		$254.76
38525	T		Biopsy/removal, lymph nodes	0113	21.4653	$1,273.82		$254.76
38530	T		Biopsy/removal, lymph nodes	0113	21.4653	$1,273.82		$254.76
38542	T		Explore deep node(s), neck	0114	40.7652	$2,419.13	$485.91	$483.83
38550	T		Removal, neck/armpit lesion	0113	21.4653	$1,273.82		$254.76
38555	T		Removal, neck/armpit lesion	0113	21.4653	$1,273.82		$254.76
38562	C		Removal, pelvic lymph nodes					
38564	C		Removal, abdomen lymph nodes					
38570	T		Laparoscopy, lymph node biop	0131	43.3389	$2,571.86	$1,001.89	$514.37
38571	T		Laparoscopy, lymphadenectomy	0132	62.9914	$3,738.10	$1,239.22	$747.62
38572	T		Laparoscopy, lymphadenectomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
38589	T		Laparoscope proc, lymphatic	0130	31.9271	$1,894.65	$659.53	$378.93
38700	T		Removal of lymph nodes, neck	0113	21.4653	$1,273.82		$254.76
38720	T		Removal of lymph nodes, neck	0113	21.4653	$1,273.82		$254.76
38724	C		Removal of lymph nodes, neck					
38740	T		Remove armpit lymph nodes	0114	40.7652	$2,419.13	$485.91	$483.83
38745	T		Remove armpit lymph nodes	0114	40.7652	$2,419.13	$485.91	$483.83
38746	C		Remove thoracic lymph nodes					
38747	C		Remove abdominal lymph nodes					
38760	T		Remove groin lymph nodes	0113	21.4653	$1,273.82		$254.76
38765	C		Remove groin lymph nodes					
38770	C		Remove pelvis lymph nodes					
38780	C		Remove abdomen lymph nodes					
38790	N		Inject for lymphatic x-ray					
38792	N		Identify sentinel node					
38794	N		Access thoracic lymph duct					
38999	S		Blood/lymph system procedure	0110	3.6594	$217.16		$43.43
39000	C		Exploration of chest					
39010	C		Exploration of chest					
39200	C		Removal chest lesion					
39220	C		Removal chest lesion					
39400	T		Visualization of chest	0069	30.6775	$1,820.49	$591.64	$364.10
39499	C		Chest procedure					
39501	C		Repair diaphragm laceration					
39502	C		Repair paraesophageal hernia					
39503	C		Repair of diaphragm hernia					
39520	C		Repair of diaphragm hernia					
39530	C		Repair of diaphragm hernia					
39531	C		Repair of diaphragm hernia					
39540	C		Repair of diaphragm hernia					
39541	C		Repair of diaphragm hernia					
39545	C		Revision of diaphragm					
39560	C		Resect diaphragm, simple					
39561	C		Resect diaphragm, complex					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
39599	C		Diaphragm surgery procedure					
4000F	E		Tobacco use txmnt counseling					
4001F	E		Tobacco use txmnt, pharmacol					
4002F	E		Statin therapy, rx					
4006F	E		Beta-blocker therapy, rx					
4009F	E		Ace inhibitor therapy, rx					
4011F	E		Oral antiplatelet tx, rx					
40490	T		Biopsy of lip	0251	2.0101	$119.29		$23.86
40500	T		Partial excision of lip	0253	16.1357	$957.54	$282.29	$191.51
40510	T		Partial excision of lip	0254	23.404	$1,388.86	$321.35	$277.77
40520	T		Partial excision of lip	0253	16.1357	$957.54	$282.29	$191.51
40525	T		Reconstruct lip with flap	0254	23.404	$1,388.86	$321.35	$277.77
40527	T		Reconstruct lip with flap	0254	23.404	$1,388.86	$321.35	$277.77
40530	T		Partial removal of lip	0254	23.404	$1,388.86	$321.35	$277.77
40650	T		Repair lip	0252	7.8673	$466.87	$113.41	$93.37
40652	T		Repair lip	0252	7.8673	$466.87	$113.41	$93.37
40654	T		Repair lip	0252	7.8673	$466.87	$113.41	$93.37
40700	T		Repair cleft lip/nasal	0256	37.3204	$2,214.70		$442.94
40701	T		Repair cleft lip/nasal	0256	37.3204	$2,214.70		$442.94
40702	T		Repair cleft lip/nasal	0256	37.3204	$2,214.70		$442.94
40720	T		Repair cleft lip/nasal	0256	37.3204	$2,214.70		$442.94
40761	T		Repair cleft lip/nasal	0256	37.3204	$2,214.70		$442.94
40799	T		Lip surgery procedure	0251	2.0101	$119.29		$23.86
40800	T		Drainage of mouth lesion	0251	2.0101	$119.29		$23.86
40801	T		Drainage of mouth lesion	0252	7.8673	$466.87	$113.41	$93.37
40804	X		Removal, foreign body, mouth	0340	0.6384	$37.88		$7.58
40805	T		Removal, foreign body, mouth	0252	7.8673	$466.87	$113.41	$93.37
40806	T		Incision of lip fold	0251	2.0101	$119.29		$23.86
40808	T		Biopsy of mouth lesion	0251	2.0101	$119.29		$23.86
40810	T		Excision of mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
40812	T		Excise/repair mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
40814	T		Excise/repair mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
40816	T		Excision of mouth lesion	0254	23.404	$1,388.86	$321.35	$277.77
40818	T		Excise oral mucosa for graft	0251	2.0101	$119.29		$23.86
40819	T		Excise lip or cheek fold	0252	7.8673	$466.87	$113.41	$93.37
40820	T		Treatment of mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
40830	T		Repair mouth laceration	0251	2.0101	$119.29		$23.86
40831	T		Repair mouth laceration	0252	7.8673	$466.87	$113.41	$93.37
40840	T		Reconstruction of mouth	0254	23.404	$1,388.86	$321.35	$277.77
40842	T		Reconstruction of mouth	0254	23.404	$1,388.86	$321.35	$277.77
40843	T		Reconstruction of mouth	0254	23.404	$1,388.86	$321.35	$277.77
40844	T		Reconstruction of mouth	0256	37.3204	$2,214.70		$442.94
40845	T		Reconstruction of mouth	0256	37.3204	$2,214.70		$442.94
40899	T		Mouth surgery procedure	0251	2.0101	$119.29		$23.86
41000	T		Drainage of mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
41005	T		Drainage of mouth lesion	0251	2.0101	$119.29		$23.86
41006	T		Drainage of mouth lesion	0254	23.404	$1,388.86	$321.35	$277.77
41007	T		Drainage of mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
41008	T		Drainage of mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
41009	T		Drainage of mouth lesion	0251	2.0101	$119.29		$23.86
41010	T		Incision of tongue fold	0252	7.8673	$466.87	$113.41	$93.37
41015	T		Drainage of mouth lesion	0251	2.0101	$119.29		$23.86
41016	T		Drainage of mouth lesion	0252	7.8673	$466.87	$113.41	$93.37
41017	T		Drainage of mouth lesion	0252	7.8673	$466.87	$113.41	$93.37
41018	T		Drainage of mouth lesion	0252	7.8673	$466.87	$113.41	$93.37
41100	T		Biopsy of tongue	0252	7.8673	$466.87	$113.41	$93.37
41105	T		Biopsy of tongue	0253	16.1357	$957.54	$282.29	$191.51
41108	T		Biopsy of floor of mouth	0252	7.8673	$466.87	$113.41	$93.37
41110	T		Excision of tongue lesion	0253	16.1357	$957.54	$282.29	$191.51
41112	T		Excision of tongue lesion	0253	16.1357	$957.54	$282.29	$191.51
41113	T		Excision of tongue lesion	0253	16.1357	$957.54	$282.29	$191.51
41114	T		Excision of tongue lesion	0254	23.404	$1,388.86	$321.35	$277.77
41115	T		Excision of tongue fold	0252	7.8673	$466.87	$113.41	$93.37
41116	T		Excision of mouth lesion	0253	16.1357	$957.54	$282.29	$191.51
41120	T		Partial removal of tongue	0254	23.404	$1,388.86	$321.35	$277.77
41130	C		Partial removal of tongue					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
41135	C		Tongue and neck surgery					
41140	C		Removal of tongue					
41145	C		Tongue removal, neck surgery					
41150	C		Tongue, mouth, jaw surgery					
41153	C		Tongue, mouth, neck surgery					
41155	C		Tongue, jaw, & neck surgery					
41250	T		Repair tongue laceration	0251	2.0101	$119.29		$23.86
41251	T		Repair tongue laceration	0251	2.0101	$119.29		$23.86
41252	T		Repair tongue laceration	0252	7.8673	$466.87	$113.41	$93.37
41500	T		Fixation of tongue	0254	23.404	$1,388.86	$321.35	$277.77
41510	T		Tongue to lip surgery	0253	16.1357	$957.54	$282.29	$191.51
41520	T		Reconstruction, tongue fold	0252	7.8673	$466.87	$113.41	$93.37
41599	T		Tongue and mouth surgery	0251	2.0101	$119.29		$23.86
41800	T		Drainage of gum lesion	0251	2.0101	$119.29		$23.86
41805	T		Removal foreign body, gum	0254	23.404	$1,388.86	$321.35	$277.77
41806	T		Removal foreign body,jawbone	0253	16.1357	$957.54	$282.29	$191.51
41820	T		Excision, gum, each quadrant	0252	7.8673	$466.87	$113.41	$93.37
41821	T		Excision of gum flap	0252	7.8673	$466.87	$113.41	$93.37
41822	T		Excision of gum lesion	0253	16.1357	$957.54	$282.29	$191.51
41823	T		Excision of gum lesion	0254	23.404	$1,388.86	$321.35	$277.77
41825	T		Excision of gum lesion	0253	16.1357	$957.54	$282.29	$191.51
41826	T		Excision of gum lesion	0253	16.1357	$957.54	$282.29	$191.51
41827	T		Excision of gum lesion	0254	23.404	$1,388.86	$321.35	$277.77
41828	T		Excision of gum lesion	0253	16.1357	$957.54	$282.29	$191.51
41830	T		Removal of gum tissue	0253	16.1357	$957.54	$282.29	$191.51
41850	T		Treatment of gum lesion	0253	16.1357	$957.54	$282.29	$191.51
41870	T		Gum graft	0254	23.404	$1,388.86	$321.35	$277.77
41872	T		Repair gum	0253	16.1357	$957.54	$282.29	$191.51
41874	T		Repair tooth socket	0254	23.404	$1,388.86	$321.35	$277.77
41899	T		Dental surgery procedure	0251	2.0101	$119.29		$23.86
42000	T		Drainage mouth roof lesion	0251	2.0101	$119.29		$23.86
42100	T		Biopsy roof of mouth	0252	7.8673	$466.87	$113.41	$93.37
42104	T		Excision lesion, mouth roof	0253	16.1357	$957.54	$282.29	$191.51
42106	T		Excision lesion, mouth roof	0253	16.1357	$957.54	$282.29	$191.51
42107	T		Excision lesion, mouth roof	0254	23.404	$1,388.86	$321.35	$277.77
42120	T		Remove palate/lesion	0256	37.3204	$2,214.70		$442.94
42140	T		Excision of uvula	0252	7.8673	$466.87	$113.41	$93.37
42145	T		Repair palate, pharynx/uvula	0254	23.404	$1,388.86	$321.35	$277.77
42160	T		Treatment mouth roof lesion	0253	16.1357	$957.54	$282.29	$191.51
42180	T		Repair palate	0251	2.0101	$119.29		$23.86
42182	T		Repair palate	0256	37.3204	$2,214.70		$442.94
42200	T		Reconstruct cleft palate	0256	37.3204	$2,214.70		$442.94
42205	T		Reconstruct cleft palate	0256	37.3204	$2,214.70		$442.94
42210	T		Reconstruct cleft palate	0256	37.3204	$2,214.70		$442.94
42215	T		Reconstruct cleft palate	0256	37.3204	$2,214.70		$442.94
42220	T		Reconstruct cleft palate	0256	37.3204	$2,214.70		$442.94
42225	T		Reconstruct cleft palate	0256	37.3204	$2,214.70		$442.94
42226	T		Lengthening of palate	0256	37.3204	$2,214.70		$442.94
42227	T		Lengthening of palate	0256	37.3204	$2,214.70		$442.94
42235	T		Repair palate	0253	16.1357	$957.54	$282.29	$191.51
42260	T		Repair nose to lip fistula	0254	23.404	$1,388.86	$321.35	$277.77
42280	T		Preparation, palate mold	0251	2.0101	$119.29		$23.86
42281	T		Insertion, palate prosthesis	0253	16.1357	$957.54	$282.29	$191.51
42299	T		Palate/uvula surgery	0251	2.0101	$119.29		$23.86
42300	T		Drainage of salivary gland	0253	16.1357	$957.54	$282.29	$191.51
42305	T		Drainage of salivary gland	0253	16.1357	$957.54	$282.29	$191.51
42310	T		Drainage of salivary gland	0251	2.0101	$119.29		$23.86
42320	T		Drainage of salivary gland	0251	2.0101	$119.29		$23.86
42325	T		Create salivary cyst drain	0251	2.0101	$119.29		$23.86
42326	T		Create salivary cyst drain	0252	7.8673	$466.87	$113.41	$93.37
42330	T		Removal of salivary stone	0253	16.1357	$957.54	$282.29	$191.51
42335	T		Removal of salivary stone	0253	16.1357	$957.54	$282.29	$191.51
42340	T		Removal of salivary stone	0253	16.1357	$957.54	$282.29	$191.51
42400	T		Biopsy of salivary gland	0005	3.5994	$213.60	$71.59	$42.72
42405	T		Biopsy of salivary gland	0253	16.1357	$957.54	$282.29	$191.51
42408	T		Excision of salivary cyst	0253	16.1357	$957.54	$282.29	$191.51

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
42409	T		Drainage of salivary cyst	0253	16.1357	$957.54	$282.29	$191.51
42410	T		Excise parotid gland/lesion	0256	37.3204	$2,214.70		$442.94
42415	T		Excise parotid gland/lesion	0256	37.3204	$2,214.70		$442.94
42420	T		Excise parotid gland/lesion	0256	37.3204	$2,214.70		$442.94
42425	T		Excise parotid gland/lesion	0256	37.3204	$2,214.70		$442.94
42426	C		Excise parotid gland/lesion					
42440	T		Excise submaxillary gland	0256	37.3204	$2,214.70		$442.94
42450	T		Excise sublingual gland	0254	23.404	$1,388.86	$321.35	$277.77
42500	T		Repair salivary duct	0254	23.404	$1,388.86	$321.35	$277.77
42505	T		Repair salivary duct	0256	37.3204	$2,214.70		$442.94
42507	T		Parotid duct diversion	0256	37.3204	$2,214.70		$442.94
42508	T		Parotid duct diversion	0256	37.3204	$2,214.70		$442.94
42509	T		Parotid duct diversion	0256	37.3204	$2,214.70		$442.94
42510	T		Parotid duct diversion	0256	37.3204	$2,214.70		$442.94
42550	N		Injection for salivary x-ray					
42600	T		Closure of salivary fistula	0253	16.1357	$957.54	$282.29	$191.51
42650	T		Dilation of salivary duct	0252	7.8673	$466.87	$113.41	$93.37
42660	T		Dilation of salivary duct	0251	2.0101	$119.29		$23.86
42665	T		Ligation of salivary duct	0254	23.404	$1,388.86	$321.35	$277.77
42699	T		Salivary surgery procedure	0251	2.0101	$119.29		$23.86
42700	T		Drainage of tonsil abscess	0251	2.0101	$119.29		$23.86
42720	T		Drainage of throat abscess	0253	16.1357	$957.54	$282.29	$191.51
42725	T		Drainage of throat abscess	0256	37.3204	$2,214.70		$442.94
42800	T		Biopsy of throat	0253	16.1357	$957.54	$282.29	$191.51
42802	T		Biopsy of throat	0253	16.1357	$957.54	$282.29	$191.51
42804	T		Biopsy of upper nose/throat	0253	16.1357	$957.54	$282.29	$191.51
42806	T		Biopsy of upper nose/throat	0254	23.404	$1,388.86	$321.35	$277.77
42808	T		Excise pharynx lesion	0253	16.1357	$957.54	$282.29	$191.51
42809	X		Remove pharynx foreign body	0340	0.6384	$37.88		$7.58
42810	T		Excision of neck cyst	0254	23.404	$1,388.86	$321.35	$277.77
42815	T		Excision of neck cyst	0256	37.3204	$2,214.70		$442.94
42820	T		Remove tonsils and adenoids	0258	22.2466	$1,320.18	$437.25	$264.04
42821	T		Remove tonsils and adenoids	0258	22.2466	$1,320.18	$437.25	$264.04
42825	T		Removal of tonsils	0258	22.2466	$1,320.18	$437.25	$264.04
42826	T		Removal of tonsils	0258	22.2466	$1,320.18	$437.25	$264.04
42830	T		Removal of adenoids	0258	22.2466	$1,320.18	$437.25	$264.04
42831	T		Removal of adenoids	0258	22.2466	$1,320.18	$437.25	$264.04
42835	T		Removal of adenoids	0258	22.2466	$1,320.18	$437.25	$264.04
42836	T		Removal of adenoids	0258	22.2466	$1,320.18	$437.25	$264.04
42842	T		Extensive surgery of throat	0254	23.404	$1,388.86	$321.35	$277.77
42844	T		Extensive surgery of throat	0256	37.3204	$2,214.70		$442.94
42845	C		Extensive surgery of throat					
42860	T		Excision of tonsil tags	0258	22.2466	$1,320.18	$437.25	$264.04
42870	T		Excision of lingual tonsil	0258	22.2466	$1,320.18	$437.25	$264.04
42890	T		Partial removal of pharynx	0256	37.3204	$2,214.70		$442.94
42892	T		Revision of pharyngeal walls	0256	37.3204	$2,214.70		$442.94
42894	C		Revision of pharyngeal walls					
42900	T		Repair throat wound	0252	7.8673	$466.87	$113.41	$93.37
42950	T		Reconstruction of throat	0254	23.404	$1,388.86	$321.35	$277.77
42953	C		Repair throat, esophagus					
42955	T		Surgical opening of throat	0254	23.404	$1,388.86	$321.35	$277.77
42960	T		Control throat bleeding	0250	1.2896	$76.53	$26.79	$15.31
42961	C		Control throat bleeding					
42962	T		Control throat bleeding	0256	37.3204	$2,214.70		$442.94
42970	T		Control nose/throat bleeding	0250	1.2896	$76.53	$26.79	$15.31
42971	C		Control nose/throat bleeding					
42972	T		Control nose/throat bleeding	0253	16.1357	$957.54	$282.29	$191.51
42999	T		Throat surgery procedure	0251	2.0101	$119.29		$23.86
43020	T		Incision of esophagus	0252	7.8673	$466.87	$113.41	$93.37
43030	T		Throat muscle surgery	0253	16.1357	$957.54	$282.29	$191.51
43045	C		Incision of esophagus					
43100	C		Excision of esophagus lesion					
43101	C		Excision of esophagus lesion					
43107	C		Removal of esophagus					
43108	C		Removal of esophagus					
43112	C		Removal of esophagus					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43113	C		Removal of esophagus					
43116	C		Partial removal of esophagus					
43117	C		Partial removal of esophagus					
43118	C		Partial removal of esophagus					
43121	C		Partial removal of esophagus					
43122	C		Partial removal of esophagus					
43123	C		Partial removal of esophagus					
43124	C		Removal of esophagus					
43130	T		Removal of esophagus pouch	0254	23.404	$1,388.86	$321.35	$277.77
43135	C		Removal of esophagus pouch					
43200	T		Esophagus endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43201	T		Esoph scope w/submucous inj	0141	8.1835	$485.63	$143.38	$97.13
43202	T		Esophagus endoscopy, biopsy	0141	8.1835	$485.63	$143.38	$97.13
43204	T		Esoph scope w/sclerosis inj	0141	8.1835	$485.63	$143.38	$97.13
43205	T		Esophagus endoscopy/ligation	0141	8.1835	$485.63	$143.38	$97.13
43215	T		Esophagus endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43216	T		Esophagus endoscopy/lesion	0141	8.1835	$485.63	$143.38	$97.13
43217	T		Esophagus endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43219	T		Esophagus endoscopy	0384	22.3392	$1,325.68	$287.93	$265.14
43220	T		Esoph endoscopy, dilation	0141	8.1835	$485.63	$143.38	$97.13
43226	T		Esoph endoscopy, dilation	0141	8.1835	$485.63	$143.38	$97.13
43227	T		Esoph endoscopy, repair	0141	8.1835	$485.63	$143.38	$97.13
43228	T		Esoph endoscopy, ablation	0422	22.9647	$1,362.79	$448.81	$272.56
43231	T		Esoph endoscopy w/us exam	0141	8.1835	$485.63	$143.38	$97.13
43232	T		Esoph endoscopy w/us fn bx	0141	8.1835	$485.63	$143.38	$97.13
43234	T		Upper GI endoscopy, exam	0141	8.1835	$485.63	$143.38	$97.13
43235	T		Uppr gi endoscopy, diagnosis	0141	8.1835	$485.63	$143.38	$97.13
43236	T		Uppr gi scope w/submuc inj	0141	8.1835	$485.63	$143.38	$97.13
43237	T		Endoscopic us exam, esoph	0141	8.1835	$485.63	$143.38	$97.13
43238	T		Uppr gi endoscopy w/us fn bx	0141	8.1835	$485.63	$143.38	$97.13
43239	T		Upper GI endoscopy, biopsy	0141	8.1835	$485.63	$143.38	$97.13
43240	T		Esoph endoscope w/drain cyst	0141	8.1835	$485.63	$143.38	$97.13
43241	T		Upper GI endoscopy with tube	0141	8.1835	$485.63	$143.38	$97.13
43242	T		Uppr gi endoscopy w/us fn bx	0141	8.1835	$485.63	$143.38	$97.13
43243	T		Upper gi endoscopy & inject	0141	8.1835	$485.63	$143.38	$97.13
43244	T		Upper GI endoscopy/ligation	0141	8.1835	$485.63	$143.38	$97.13
43245	T		Uppr gi scope dilate strictr	0141	8.1835	$485.63	$143.38	$97.13
43246	T		Place gastrostomy tube	0141	8.1835	$485.63	$143.38	$97.13
43247	T		Operative upper GI endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43248	T		Uppr gi endoscopy/guide wire	0141	8.1835	$485.63	$143.38	$97.13
43249	T		Esoph endoscopy, dilation	0141	8.1835	$485.63	$143.38	$97.13
43250	T		Upper GI endoscopy/tumor	0141	8.1835	$485.63	$143.38	$97.13
43251	T		Operative upper GI endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43255	T		Operative upper GI endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43256	T		Uppr gi endoscopy w stent	0384	22.3392	$1,325.68	$287.93	$265.14
43257	T		Uppr gi scope w/thrml txmnt	0422	22.9647	$1,362.79	$448.81	$272.56
43258	T		Operative upper GI endoscopy	0141	8.1835	$485.63	$143.38	$97.13
43259	T		Endoscopic ultrasound exam	0141	8.1835	$485.63	$143.38	$97.13
43260	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43261	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43262	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43263	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43264	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43265	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43267	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43268	T		Endo cholangiopancreatograph	0384	22.3392	$1,325.68	$287.93	$265.14
43269	T		Endo cholangiopancreatograph	0384	22.3392	$1,325.68	$287.93	$265.14
43271	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43272	T		Endo cholangiopancreatograph	0151	18.7338	$1,111.72	$245.46	$222.34
43280	T		Laparoscopy, fundoplasty	0132	62.9914	$3,738.10	$1,239.22	$747.62
43289	T		Laparoscope proc, esoph	0130	31.9271	$1,894.65	$659.53	$378.93
43300	C		Repair of esophagus					
43305	C		Repair esophagus and fistula					
43310	C		Repair of esophagus					
43312	C		Repair esophagus and fistula					
43313	C		Esophagoplasty congenital					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43314	C		Tracheo-esophagoplasty cong					
43320	C		Fuse esophagus & stomach					
43324	C		Revise esophagus & stomach					
43325	C		Revise esophagus & stomach					
43326	C		Revise esophagus & stomach					
43330	C		Repair of esophagus					
43331	C		Repair of esophagus					
43340	C		Fuse esophagus & intestine					
43341	C		Fuse esophagus & intestine					
43350	C		Surgical opening, esophagus					
43351	C		Surgical opening, esophagus					
43352	C		Surgical opening, esophagus					
43360	C		Gastrointestinal repair					
43361	C		Gastrointestinal repair					
43400	C		Ligate esophagus veins					
43401	C		Esophagus surgery for veins					
43405	C		Ligate/staple esophagus					
43410	C		Repair esophagus wound					
43415	C		Repair esophagus wound					
43420	C		Repair esophagus opening					
43425	C		Repair esophagus opening					
43450	T		Dilate esophagus	0140	5.4737	$324.83	$94.18	$64.97
43453	T		Dilate esophagus	0140	5.4737	$324.83	$94.18	$64.97
43456	T		Dilate esophagus	0140	5.4737	$324.83	$94.18	$64.97
43458	T		Dilate esophagus	0140	5.4737	$324.83	$94.18	$64.97
43460	C		Pressure treatment esophagus					
43496	C		Free jejunum flap, microvasc					
43499	T		Esophagus surgery procedure	0141	8.1835	$485.63	$143.38	$97.13
43500	C		Surgical opening of stomach					
43501	C		Surgical repair of stomach					
43502	C		Surgical repair of stomach					
43510	T		Surgical opening of stomach	0141	8.1835	$485.63	$143.38	$97.13
43520	C		Incision of pyloric muscle					
43600	T		Biopsy of stomach	0141	8.1835	$485.63	$143.38	$97.13
43605	C		Biopsy of stomach					
43610	C		Excision of stomach lesion					
43611	C		Excision of stomach lesion					
43620	C		Removal of stomach					
43621	C		Removal of stomach					
43622	C		Removal of stomach					
43631	C		Removal of stomach, partial					
43632	C		Removal of stomach, partial					
43633	C		Removal of stomach, partial					
43634	C		Removal of stomach, partial					
43635	C		Removal of stomach, partial					
43638	C		Removal of stomach, partial					
43639	C		Removal of stomach, partial					
43640	C		Vagotomy & pylorus repair					
43641	C		Vagotomy & pylorus repair					
43644	C		Lap gastric bypass/roux-en-y					
43645	C		Lap gastr bypass incl smll i					
43651	T		Laparoscopy, vagus nerve	0132	62.9914	$3,738.10	$1,239.22	$747.62
43652	T		Laparoscopy, vagus nerve	0132	62.9914	$3,738.10	$1,239.22	$747.62
43653	T		Laparoscopy, gastrostomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
43659	T		Laparoscope proc, stom	0130	31.9271	$1,894.65	$659.53	$378.93
43750	T		Place gastrostomy tube	0141	8.1835	$485.63	$143.38	$97.13
43752	X		Nasal/orogastric w/stent	0272	1.3801	$81.90	$32.76	$16.38
43760	T		Change gastrostomy tube	0121	2.2766	$135.10	$43.80	$27.02
43761	T		Reposition gastrostomy tube	0122	6.9721	$413.75	$84.85	$82.75
43800	C		Reconstruction of pylorus					
43810	C		Fusion of stomach and bowel					
43820	C		Fusion of stomach and bowel					
43825	C		Fusion of stomach and bowel					
43830	T		Place gastrostomy tube	0422	22.9647	$1,362.79	$448.81	$272.56
43831	T		Place gastrostomy tube	0141	8.1835	$485.63	$143.38	$97.13
43832	C		Place gastrostomy tube					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43840	C		Repair of stomach lesion					
43842	C		Gastroplasty for obesity					
43843	C		Gastroplasty for obesity					
43845	C		Gastroplasty duodenal switch					
43846	C		Gastric bypass for obesity					
43847	C		Gastric bypass for obesity					
43848	C		Revision gastroplasty					
43850	C		Revise stomach-bowel fusion					
43855	C		Revise stomach-bowel fusion					
43860	C		Revise stomach-bowel fusion					
43865	C		Revise stomach-bowel fusion					
43870	T		Repair stomach opening	0141	8.1835	$485.63	$143.38	$97.13
43880	C		Repair stomach-bowel fistula					
43999	T		Stomach surgery procedure	0141	8.1835	$485.63	$143.38	$97.13
44005	C		Freeing of bowel adhesion					
44010	C		Incision of small bowel					
44015	C		Insert needle cath bowel					
44020	C		Explore small intestine					
44021	C		Decompress small bowel					
44025	C		Incision of large bowel					
44050	C		Reduce bowel obstruction					
44055	C		Correct malrotation of bowel					
44100	T		Biopsy of bowel	0141	8.1835	$485.63	$143.38	$97.13
44110	C		Excise intestine lesion(s)					
44111	C		Excision of bowel lesion(s)					
44120	C		Removal of small intestine					
44121	C		Removal of small intestine					
44125	C		Removal of small intestine					
44126	C		Enterectomy w/o taper, cong					
44127	C		Enterectomy w/taper, cong					
44128	C		Enterectomy cong, add-on					
44130	C		Bowel to bowel fusion					
44132	C		Enterectomy, cadaver donor					
44133	C		Enterectomy, live donor					
44135	C		Intestine transplnt, cadaver					
44136	C		Intestine transplant, live					
44137	C		Remove intestinal allograft					
44139	C		Mobilization of colon					
44140	C		Partial removal of colon					
44141	C		Partial removal of colon					
44143	C		Partial removal of colon					
44144	C		Partial removal of colon					
44145	C		Partial removal of colon					
44146	C		Partial removal of colon					
44147	C		Partial removal of colon					
44150	C		Removal of colon					
44151	C		Removal of colon/ileostomy					
44152	C		Removal of colon/ileostomy					
44153	C		Removal of colon/ileostomy					
44155	C		Removal of colon/ileostomy					
44156	C		Removal of colon/ileostomy					
44160	C		Removal of colon					
44200	T		Laparoscopy, enterolysis	0131	43.3389	$2,571.86	$1,001.89	$514.37
44201	T		Laparoscopy, jejunostomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
44202	C		Lap resect s/intestine singl					
44203	C		Lap resect s/intestine, addl					
44204	C		Laparo partial colectomy					
44205	C		Lap colectomy part w/ileum					
44206	T		Lap part colectomy w/stoma	0132	62.9914	$3,738.10	$1,239.22	$747.62
44207	T		L colectomy/coloproctostomy	0132	62.9914	$3,738.10	$1,239.22	$747.62
44208	T		L colectomy/coloproctostomy	0132	62.9914	$3,738.10	$1,239.22	$747.62
44210	C		Laparo total proctocolectomy					
44211	C		Laparo total proctocolectomy					
44212	C		Laparo total proctocolectomy					
44238	T		Laparoscope proc, intestine	0130	31.9271	$1,894.65	$659.53	$378.93
44239	T		Laparoscope proc, rectum	0130	31.9271	$1,894.65	$659.53	$378.93

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
44300	C		Open bowel to skin					
44310	C		Ileostomy/jejunostomy					
44312	T		Revision of ileostomy	0027	18.4182	$1,092.99	$329.72	$218.60
44314	C		Revision of ileostomy					
44316	C		Devise bowel pouch					
44320	C		Colostomy					
44322	C		Colostomy with biopsies					
44340	T		Revision of colostomy	0027	18.4182	$1,092.99	$329.72	$218.60
44345	C		Revision of colostomy					
44346	C		Revision of colostomy					
44360	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44361	T		Small bowel endoscopy/biopsy	0142	9.3487	$554.78	$152.78	$110.96
44363	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44364	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44365	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44366	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44369	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44370	T		Small bowel endoscopy/stent	0384	22.3392	$1,325.68	$287.93	$265.14
44372	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44373	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44376	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44377	T		Small bowel endoscopy/biopsy	0142	9.3487	$554.78	$152.78	$110.96
44378	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44379	T		S bowel endoscope w/stent	0384	22.3392	$1,325.68	$287.93	$265.14
44380	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44382	T		Small bowel endoscopy	0142	9.3487	$554.78	$152.78	$110.96
44383	T		Ileoscopy w/stent	0384	22.3392	$1,325.68	$287.93	$265.14
44385	T		Endoscopy of bowel pouch	0143	8.6869	$515.51	$186.06	$103.10
44386	T		Endoscopy, bowel pouch/biop	0143	8.6869	$515.51	$186.06	$103.10
44388	T		Colonoscopy	0143	8.6869	$515.51	$186.06	$103.10
44389	T		Colonoscopy with biopsy	0143	8.6869	$515.51	$186.06	$103.10
44390	T		Colonoscopy for foreign body	0143	8.6869	$515.51	$186.06	$103.10
44391	T		Colonoscopy for bleeding	0143	8.6869	$515.51	$186.06	$103.10
44392	T		Colonoscopy & polypectomy	0143	8.6869	$515.51	$186.06	$103.10
44393	T		Colonoscopy, lesion removal	0143	8.6869	$515.51	$186.06	$103.10
44394	T		Colonoscopy w/snare	0143	8.6869	$515.51	$186.06	$103.10
44397	T		Colonoscopy w/stent	0384	22.3392	$1,325.68	$287.93	$265.14
44500	T		Intro, gastrointestinal tube	0121	2.2766	$135.10	$43.80	$27.02
44602	C		Suture, small intestine					
44603	C		Suture, small intestine					
44604	C		Suture, large intestine					
44605	C		Repair of bowel lesion					
44615	C		Intestinal stricturoplasty					
44620	C		Repair bowel opening					
44625	C		Repair bowel opening					
44626	C		Repair bowel opening					
44640	C		Repair bowel-skin fistula					
44650	C		Repair bowel fistula					
44660	C		Repair bowel-bladder fistula					
44661	C		Repair bowel-bladder fistula					
44680	C		Surgical revision, intestine					
44700	C		Suspend bowel w/prosthesis					
44701	N		Intraop colon lavage add-on					
44715	C		Prepare donor intestine					
44720	C		Prep donor intestine/venous					
44721	C		Prep donor intestine/artery					
44799	T		Unlisted procedure intestine	0142	9.3487	$554.78	$152.78	$110.96
44800	C		Excision of bowel pouch					
44820	C		Excision of mesentery lesion					
44850	C		Repair of mesentery					
44899	C		Bowel surgery procedure					
44900	C		Drain app abscess, open					
44901	T		Drain app abscess, percut	0037	9.4751	$562.28	$224.91	$112.46
44950	C		Appendectomy					
44955	C		Appendectomy add-on					
44960	C		Appendectomy					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
44970	T		Laparoscopy, appendectomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
44979	T		Laparoscope proc, app	0130	31.9271	$1,894.65	$659.53	$378.93
45000	T		Drainage of pelvic abscess	0148	3.7383	$221.84	$57.21	$44.37
45005	T		Drainage of rectal abscess	0155	16.2546	$964.60		$192.92
45020	T		Drainage of rectal abscess	0155	16.2546	$964.60		$192.92
45100	T		Biopsy of rectum	0149	18.0726	$1,072.48	$293.06	$214.50
45108	T		Removal of anorectal lesion	0150	23.8654	$1,416.24	$437.12	$283.25
45110	C		Removal of rectum					
45111	C		Partial removal of rectum					
45112	C		Removal of rectum					
45113	C		Partial proctectomy					
45114	C		Partial removal of rectum					
45116	C		Partial removal of rectum					
45119	C		Remove rectum w/reservoir					
45120	C		Removal of rectum					
45121	C		Removal of rectum and colon					
45123	C		Partial proctectomy					
45126	C		Pelvic exenteration					
45130	C		Excision of rectal prolapse					
45135	C		Excision of rectal prolapse					
45136	C		Excise ileoanal reservior					
45150	T		Excision of rectal stricture	0149	18.0726	$1,072.48	$293.06	$214.50
45160	T		Excision of rectal lesion	0150	23.8654	$1,416.24	$437.12	$283.25
45170	T		Excision of rectal lesion	0150	23.8654	$1,416.24	$437.12	$283.25
45190	T		Destruction, rectal tumor	0150	23.8654	$1,416.24	$437.12	$283.25
45300	T		Proctosigmoidoscopy dx	0146	4.6374	$275.20	$64.40	$55.04
45303	T		Proctosigmoidoscopy dilate	0147	7.9679	$472.84		$94.57
45305	T		Proctosigmoidoscopy w/bx	0147	7.9679	$472.84		$94.57
45307	T		Proctosigmoidoscopy fb	0428	19.9022	$1,181.06		$236.21
45308	T		Proctosigmoidoscopy removal	0147	7.9679	$472.84		$94.57
45309	T		Proctosigmoidoscopy removal	0147	7.9679	$472.84		$94.57
45315	T		Proctosigmoidoscopy removal	0147	7.9679	$472.84		$94.57
45317	T		Proctosigmoidoscopy bleed	0147	7.9679	$472.84		$94.57
45320	T		Proctosigmoidoscopy ablate	0428	19.9022	$1,181.06		$236.21
45321	T		Proctosigmoidoscopy volvul	0428	19.9022	$1,181.06		$236.21
45327	T		Proctosigmoidoscopy w/stent	0384	22.3392	$1,325.68	$287.93	$265.14
45330	T		Diagnostic sigmoidoscopy	0146	4.6374	$275.20	$64.40	$55.04
45331	T		Sigmoidoscopy and biopsy	0146	4.6374	$275.20	$64.40	$55.04
45332	T		Sigmoidoscopy w/fb removal	0146	4.6374	$275.20	$64.40	$55.04
45333	T		Sigmoidoscopy & polypectomy	0147	7.9679	$472.84		$94.57
45334	T		Sigmoidoscopy for bleeding	0147	7.9679	$472.84		$94.57
45335	T		Sigmoidoscopy w/submuc inj	0146	4.6374	$275.20	$64.40	$55.04
45337	T		Sigmoidoscopy & decompress	0146	4.6374	$275.20	$64.40	$55.04
45338	T		Sigmoidoscopy w/tumr remove	0147	7.9679	$472.84		$94.57
45339	T		Sigmoidoscopy w/ablate tumr	0147	7.9679	$472.84		$94.57
45340	T		Sig w/balloon dilation	0147	7.9679	$472.84		$94.57
45341	T		Sigmoidoscopy w/ultrasound	0147	7.9679	$472.84		$94.57
45342	T		Sigmoidoscopy w/us guide bx	0147	7.9679	$472.84		$94.57
45345	T		Sigmoidoscopy w/stent	0384	22.3392	$1,325.68	$287.93	$265.14
45355	T		Surgical colonoscopy	0143	8.6869	$515.51	$186.06	$103.10
45378	T		Diagnostic colonoscopy	0143	8.6869	$515.51	$186.06	$103.10
45379	T		Colonoscopy w/fb removal	0143	8.6869	$515.51	$186.06	$103.10
45380	T		Colonoscopy and biopsy	0143	8.6869	$515.51	$186.06	$103.10
45381	T		Colonoscopy, submucous inj	0143	8.6869	$515.51	$186.06	$103.10
45382	T		Colonoscopy/control bleeding	0143	8.6869	$515.51	$186.06	$103.10
45383	T		Lesion removal colonoscopy	0143	8.6869	$515.51	$186.06	$103.10
45384	T		Lesion remove colonoscopy	0143	8.6869	$515.51	$186.06	$103.10
45385	T		Lesion removal colonoscopy	0143	8.6869	$515.51	$186.06	$103.10
45386	T		Colonoscopy dilate stricture	0143	8.6869	$515.51	$186.06	$103.10
45387	T		Colonoscopy w/stent	0384	22.3392	$1,325.68	$287.93	$265.14
45391	T		Colonoscopy w/endoscope us	0143	8.6869	$515.51	$186.06	$103.10
45392	T		Colonoscopy w/endoscopic fnb	0143	8.6869	$515.51	$186.06	$103.10
45500	T		Repair of rectum	0149	18.0726	$1,072.48	$293.06	$214.50
45505	T		Repair of rectum	0150	23.8654	$1,416.24	$437.12	$283.25
45520	T		Treatment of rectal prolapse	0098	1.1346	$67.33		$13.47
45540	C		Correct rectal prolapse					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
45541	T		Correct rectal prolapse	0150	23.8654	$1,416.24	$437.12	$283.25
45550	C		Repair rectum/remove sigmoid					
45560	T		Repair of rectocele	0150	23.8654	$1,416.24	$437.12	$283.25
45562	C		Exploration/repair of rectum					
45563	C		Exploration/repair of rectum					
45800	C		Repair rect/bladder fistula					
45805	C		Repair fistula w/colostomy					
45820	C		Repair rectourethral fistula					
45825	C		Repair fistula w/colostomy					
45900	T		Reduction of rectal prolapse	0148	3.7383	$221.84	$57.21	$44.37
45905	T		Dilation of anal sphincter	0149	18.0726	$1,072.48	$293.06	$214.50
45910	T		Dilation of rectal narrowing	0149	18.0726	$1,072.48	$293.06	$214.50
45915	T		Remove rectal obstruction	0148	3.7383	$221.84	$57.21	$44.37
45999	T		Rectum surgery procedure	0148	3.7383	$221.84	$57.21	$44.37
46020	T		Placement of seton	0150	23.8654	$1,416.24	$437.12	$283.25
46030	T		Removal of rectal marker	0148	3.7383	$221.84	$57.21	$44.37
46040	T		Incision of rectal abscess	0149	18.0726	$1,072.48	$293.06	$214.50
46045	T		Incision of rectal abscess	0150	23.8654	$1,416.24	$437.12	$283.25
46050	T		Incision of anal abscess	0148	3.7383	$221.84	$57.21	$44.37
46060	T		Incision of rectal abscess	0150	23.8654	$1,416.24	$437.12	$283.25
46070	T		Incision of anal septum	0155	16.2546	$964.60		$192.92
46080	T		Incision of anal sphincter	0149	18.0726	$1,072.48	$293.06	$214.50
46083	T		Incise external hemorrhoid	0148	3.7383	$221.84	$57.21	$44.37
46200	T		Removal of anal fissure	0150	23.8654	$1,416.24	$437.12	$283.25
46210	T		Removal of anal crypt	0149	18.0726	$1,072.48	$293.06	$214.50
46211	T		Removal of anal crypts	0150	23.8654	$1,416.24	$437.12	$283.25
46220	T		Removal of anal tag	0149	18.0726	$1,072.48	$293.06	$214.50
46221	T		Ligation of hemorrhoid(s)	0148	3.7383	$221.84	$57.21	$44.37
46230	T		Removal of anal tags	0149	18.0726	$1,072.48	$293.06	$214.50
46250	T		Hemorrhoidectomy	0150	23.8654	$1,416.24	$437.12	$283.25
46255	T		Hemorrhoidectomy	0150	23.8654	$1,416.24	$437.12	$283.25
46257	T		Remove hemorrhoids & fissure	0150	23.8654	$1,416.24	$437.12	$283.25
46258	T		Remove hemorrhoids & fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46260	T		Hemorrhoidectomy	0150	23.8654	$1,416.24	$437.12	$283.25
46261	T		Remove hemorrhoids & fissure	0150	23.8654	$1,416.24	$437.12	$283.25
46262	T		Remove hemorrhoids & fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46270	T		Removal of anal fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46275	T		Removal of anal fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46280	T		Removal of anal fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46285	T		Removal of anal fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46288	T		Repair anal fistula	0150	23.8654	$1,416.24	$437.12	$283.25
46320	T		Removal of hemorrhoid clot	0148	3.7383	$221.84	$57.21	$44.37
46500	T		Injection into hemorrhoid(s)	0155	16.2546	$964.60		$192.92
46600	X		Diagnostic anoscopy	0340	0.6384	$37.88		$7.58
46604	T		Anoscopy and dilation	0147	7.9679	$472.84		$94.57
46606	T		Anoscopy and biopsy	0146	4.6374	$275.20	$64.40	$55.04
46608	T		Anoscopy, remove for body	0147	7.9679	$472.84		$94.57
46610	T		Anoscopy, remove lesion	0428	19.9022	$1,181.06		$236.21
46611	T		Anoscopy	0147	7.9679	$472.84		$94.57
46612	T		Anoscopy, remove lesions	0428	19.9022	$1,181.06		$236.21
46614	T		Anoscopy, control bleeding	0146	4.6374	$275.20	$64.40	$55.04
46615	T		Anoscopy	0428	19.9022	$1,181.06		$236.21
46700	T		Repair of anal stricture	0150	23.8654	$1,416.24	$437.12	$283.25
46705	C		Repair of anal stricture					
46706	T		Repr of anal fistula w/glue	0150	23.8654	$1,416.24	$437.12	$283.25
46715	C		Repair of anovaginal fistula					
46716	C		Repair of anovaginal fistula					
46730	C		Construction of absent anus					
46735	C		Construction of absent anus					
46740	C		Construction of absent anus					
46742	C		Repair of imperforated anus					
46744	C		Repair of cloacal anomaly					
46746	C		Repair of cloacal anomaly					
46748	C		Repair of cloacal anomaly					
46750	T		Repair of anal sphincter	0150	23.8654	$1,416.24	$437.12	$283.25
46751	C		Repair of anal sphincter					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
46753	T		Reconstruction of anus	0150	23.8654	$1,416.24	$437.12	$283.25
46754	T		Removal of suture from anus	0149	18.0726	$1,072.48	$293.06	$214.50
46760	T		Repair of anal sphincter	0150	23.8654	$1,416.24	$437.12	$283.25
46761	T		Repair of anal sphincter	0150	23.8654	$1,416.24	$437.12	$283.25
46762	T		Implant artificial sphincter	0150	23.8654	$1,416.24	$437.12	$283.25
46900	T		Destruction, anal lesion(s)	0016	2.5834	$153.31	$33.57	$30.66
46910	T		Destruction, anal lesion(s)	0017	18.4211	$1,093.16	$227.84	$218.63
46916	T		Cryosurgery, anal lesion(s)	0013	1.1078	$65.74	$14.20	$13.15
46917	T		Laser surgery, anal lesions	0695	20.3164	$1,205.64	$266.59	$241.13
46922	T		Excision of anal lesion(s)	0695	20.3164	$1,205.64	$266.59	$241.13
46924	T		Destruction, anal lesion(s)	0695	20.3164	$1,205.64	$266.59	$241.13
46934	T		Destruction of hemorrhoids	0155	16.2546	$964.60		$192.92
46935	T		Destruction of hemorrhoids	0155	16.2546	$964.60		$192.92
46936	T		Destruction of hemorrhoids	0149	18.0726	$1,072.48	$293.06	$214.50
46937	T		Cryotherapy of rectal lesion	0149	18.0726	$1,072.48	$293.06	$214.50
46938	T		Cryotherapy of rectal lesion	0150	23.8654	$1,416.24	$437.12	$283.25
46940	T		Treatment of anal fissure	0149	18.0726	$1,072.48	$293.06	$214.50
46942	T		Treatment of anal fissure	0148	3.7383	$221.84	$57.21	$44.37
46945	T		Ligation of hemorrhoids	0155	16.2546	$964.60		$192.92
46946	T		Ligation of hemorrhoids	0155	16.2546	$964.60		$192.92
46947	T		Hemorrhoidopexy by stapling	0150	23.8654	$1,416.24	$437.12	$283.25
46999	T		Anus surgery procedure	0148	3.7383	$221.84	$57.21	$44.37
47000	T		Needle biopsy of liver	0685	6.0174	$357.09	$115.47	$71.42
47001	N		Needle biopsy, liver add-on					
47010	C		Open drainage, liver lesion					
47011	T		Percut drain, liver lesion	0037	9.4751	$562.28	$224.91	$112.46
47015	C		Inject/aspirate liver cyst					
47100	C		Wedge biopsy of liver					
47120	C		Partial removal of liver					
47122	C		Extensive removal of liver					
47125	C		Partial removal of liver					
47130	C		Partial removal of liver					
47133	C		Removal of donor liver					
47135	C		Transplantation of liver					
47136	C		Transplantation of liver					
47140	C		Partial removal, donor liver					
47141	C		Partial removal, donor liver					
47142	C		Partial removal, donor liver					
47143	C		Prep donor liver, whole					
47144	C		Prep donor liver, 3-segment					
47145	C		Prep donor liver, lobe split					
47146	C		Prep donor liver/venous					
47147	C		Prep donor liver/arterial					
47300	C		Surgery for liver lesion					
47350	C		Repair liver wound					
47360	C		Repair liver wound					
47361	C		Repair liver wound					
47362	C		Repair liver wound					
47370	T		Laparo ablate liver tumor rf	0131	43.3389	$2,571.86	$1,001.89	$514.37
47371	T		Laparo ablate liver cryosurg	0131	43.3389	$2,571.86	$1,001.89	$514.37
47379	T		Laparoscope procedure, liver	0130	31.9271	$1,894.65	$659.53	$378.93
47380	C		Open ablate liver tumor rf					
47381	C		Open ablate liver tumor cryo					
47382	T		Percut ablate liver rf	0423	40.2866	$2,390.73		$478.15
47399	T		Liver surgery procedure	0002	0.9559	$56.73		$11.35
47400	C		Incision of liver duct					
47420	C		Incision of bile duct					
47425	C		Incision of bile duct					
47460	C		Incise bile duct sphincter					
47480	C		Incision of gallbladder					
47490	T		Incision of gallbladder	0152	12.2833	$728.93		$145.79
47500	N		Injection for liver x-rays					
47505	N		Injection for liver x-rays					
47510	T		Insert catheter, bile duct	0152	12.2833	$728.93		$145.79
47511	T		Insert bile duct drain	0152	12.2833	$728.93		$145.79
47525	T		Change bile duct catheter	0427	10.1977	$605.16	$124.11	$121.03

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
47530	T		Revise/reinsert bile tube	0427	10.1977	$605.16	$124.11	$121.03
47550	C		Bile duct endoscopy add-on					
47552	T		Biliary endoscopy thru skin	0152	12.2833	$728.93		$145.79
47553	T		Biliary endoscopy thru skin	0152	12.2833	$728.93		$145.79
47554	T		Biliary endoscopy thru skin	0152	12.2833	$728.93		$145.79
47555	T		Biliary endoscopy thru skin	0152	12.2833	$728.93		$145.79
47556	T		Biliary endoscopy thru skin	0152	12.2833	$728.93		$145.79
47560	T		Laparoscopy w/cholangio	0130	31.9271	$1,894.65	$659.53	$378.93
47561	T		Laparo w/cholangio/biopsy	0130	31.9271	$1,894.65	$659.53	$378.93
47562	T		Laparoscopic cholecystectomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
47563	T		Laparo cholecystectomy/graph	0131	43.3389	$2,571.86	$1,001.89	$514.37
47564	T		Laparo cholecystectomy/explr	0131	43.3389	$2,571.86	$1,001.89	$514.37
47570	C		Laparo cholecystoenterostomy					
47579	T		Laparoscope proc, biliary	0130	31.9271	$1,894.65	$659.53	$378.93
47600	C		Removal of gallbladder					
47605	C		Removal of gallbladder					
47610	C		Removal of gallbladder					
47612	C		Removal of gallbladder					
47620	C		Removal of gallbladder					
47630	T		Remove bile duct stone	0152	12.2833	$728.93		$145.79
47700	C		Exploration of bile ducts					
47701	C		Bile duct revision					
47711	C		Excision of bile duct tumor					
47712	C		Excision of bile duct tumor					
47715	C		Excision of bile duct cyst					
47716	C		Fusion of bile duct cyst					
47720	C		Fuse gallbladder & bowel					
47721	C		Fuse upper gi structures					
47740	C		Fuse gallbladder & bowel					
47741	C		Fuse gallbladder & bowel					
47760	C		Fuse bile ducts and bowel					
47765	C		Fuse liver ducts & bowel					
47780	C		Fuse bile ducts and bowel					
47785	C		Fuse bile ducts and bowel					
47800	C		Reconstruction of bile ducts					
47801	C		Placement, bile duct support					
47802	C		Fuse liver duct & intestine					
47900	C		Suture bile duct injury					
47999	T		Bile tract surgery procedure	0152	12.2833	$728.93		$145.79
48000	C		Drainage of abdomen					
48001	C		Placement of drain, pancreas					
48005	C		Resect/debride pancreas					
48020	C		Removal of pancreatic stone					
48100	C		Biopsy of pancreas, open					
48102	T		Needle biopsy, pancreas	0685	6.0174	$357.09	$115.47	$71.42
48120	C		Removal of pancreas lesion					
48140	C		Partial removal of pancreas					
48145	C		Partial removal of pancreas					
48146	C		Pancreatectomy					
48148	C		Removal of pancreatic duct					
48150	C		Partial removal of pancreas					
48152	C		Pancreatectomy					
48153	C		Pancreatectomy					
48154	C		Pancreatectomy					
48155	C		Removal of pancreas					
48160	E		Pancreas removal/transplant					
48180	C		Fuse pancreas and bowel					
48400	C		Injection, intraop add-on					
48500	C		Surgery of pancreatic cyst					
48510	C		Drain pancreatic pseudocyst					
48511	T		Drain pancreatic pseudocyst	0037	9.4751	$562.28	$224.91	$112.46
48520	C		Fuse pancreas cyst and bowel					
48540	C		Fuse pancreas cyst and bowel					
48545	C		Pancreatorrhaphy					
48547	C		Duodenal exclusion					
48550	E		Donor pancreatectomy					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
48551	C		Prep donor pancreas					
48552	C		Prep donor pancreas/venous					
48554	E		Transpl allograft pancreas					
48556	C		Removal, allograft pancreas					
48999	T		Pancreas surgery procedure	0004	1.7646	$104.72	$22.36	$20.94
49000	C		Exploration of abdomen					
49002	C		Reopening of abdomen					
49010	C		Exploration behind abdomen					
49020	C		Drain abdominal abscess					
49021	T		Drain abdominal abscess	0037	9.4751	$562.28	$224.91	$112.46
49040	C		Drain, open, abdom abscess					
49041	T		Drain, percut, abdom abscess	0037	9.4751	$562.28	$224.91	$112.46
49060	C		Drain, open, retrop abscess					
49061	T		Drain, percut, retroper absc	0037	9.4751	$562.28	$224.91	$112.46
49062	C		Drain to peritoneal cavity					
49080	T		Puncture, peritoneal cavity	0070	3.2101	$190.50		$38.10
49081	T		Removal of abdominal fluid	0070	3.2101	$190.50		$38.10
49085	T		Remove abdomen foreign body	0153	21.6961	$1,287.51	$382.75	$257.50
49180	T		Biopsy, abdominal mass	0685	6.0174	$357.09	$115.47	$71.42
49200	T		Removal of abdominal lesion	0130	31.9271	$1,894.65	$659.53	$378.93
49201	C		Remove abdom lesion, complex					
49215	C		Excise sacral spine tumor					
49220	C		Multiple surgery, abdomen					
49250	T		Excision of umbilicus	0153	21.6961	$1,287.51	$382.75	$257.50
49255	C		Removal of omentum					
49320	T		Diag laparo separate proc	0130	31.9271	$1,894.65	$659.53	$378.93
49321	T		Laparoscopy, biopsy	0130	31.9271	$1,894.65	$659.53	$378.93
49322	T		Laparoscopy, aspiration	0130	31.9271	$1,894.65	$659.53	$378.93
49323	T		Laparo drain lymphocele	0130	31.9271	$1,894.65	$659.53	$378.93
49329	T		Laparo proc, abdm/per/oment	0130	31.9271	$1,894.65	$659.53	$378.93
49400	N		Air injection into abdomen					
49419	T		Insrt abdom cath for chemotx	0115	31.4727	$1,867.68	$459.35	$373.54
49420	T		Insert abdom drain, temp	0652	28.8948	$1,714.70		$342.94
49421	T		Insert abdom drain, perm	0652	28.8948	$1,714.70		$342.94
49422	T		Remove perm cannula/catheter	0105	22.3685	$1,327.41	$370.40	$265.48
49423	T		Exchange drainage catheter	0152	12.2833	$728.93		$145.79
49424	N		Assess cyst, contrast inject					
49425	C		Insert abdomen-venous drain					
49426	T		Revise abdomen-venous shunt	0153	21.6961	$1,287.51	$382.75	$257.50
49427	N		Injection, abdominal shunt					
49428	C		Ligation of shunt					
49429	T		Removal of shunt	0105	22.3685	$1,327.41	$370.40	$265.48
49491	T		Rpr hern preemie reduc	0154	28.7847	$1,708.17	$464.85	$341.63
49492	T		Rpr ing hern premie, blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49495	T		Rpr ing hernia baby, reduc	0154	28.7847	$1,708.17	$464.85	$341.63
49496	T		Rpr ing hernia baby, blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49500	T		Rpr ing hernia, init, reduce	0154	28.7847	$1,708.17	$464.85	$341.63
49501	T		Rpr ing hernia, init blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49505	T		Prp i/hern init reduc>5 yr	0154	28.7847	$1,708.17	$464.85	$341.63
49507	T		Prp i/hern init block>5 yr	0154	28.7847	$1,708.17	$464.85	$341.63
49520	T		Rerepair ing hernia, reduce	0154	28.7847	$1,708.17	$464.85	$341.63
49521	T		Rerepair ing hernia, blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49525	T		Repair ing hernia, sliding	0154	28.7847	$1,708.17	$464.85	$341.63
49540	T		Repair lumbar hernia	0154	28.7847	$1,708.17	$464.85	$341.63
49550	T		Rpr rem hernia, init, reduce	0154	28.7847	$1,708.17	$464.85	$341.63
49553	T		Rpr fem hernia, init blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49555	T		Rerepair fem hernia, reduce	0154	28.7847	$1,708.17	$464.85	$341.63
49557	T		Rerepair fem hernia, blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49560	T		Rpr ventral hern init, reduc	0154	28.7847	$1,708.17	$464.85	$341.63
49561	T		Rpr ventral hern init, block	0154	28.7847	$1,708.17	$464.85	$341.63
49565	T		Rerepair ventrl hern, reduce	0154	28.7847	$1,708.17	$464.85	$341.63
49566	T		Rerepair ventrl hern, block	0154	28.7847	$1,708.17	$464.85	$341.63
49568	T		Hernia repair w/mesh	0154	28.7847	$1,708.17	$464.85	$341.63
49570	T		Rpr epigastric hern, reduce	0154	28.7847	$1,708.17	$464.85	$341.63
49572	T		Rpr epigastric hern, blocked	0154	28.7847	$1,708.17	$464.85	$341.63
49580	T		Rpr umbil hern, reduc < 5 yr	0154	28.7847	$1,708.17	$464.85	$341.63

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
49582	T		Rpr umbil hern, block < 5 yr	0154	28.7847	$1,708.17	$464.85	$341.63
49585	T		Rpr umbil hern, reduc > 5 yr	0154	28.7847	$1,708.17	$464.85	$341.63
49587	T		Rpr umbil hern, block > 5 yr	0154	28.7847	$1,708.17	$464.85	$341.63
49590	T		Repair spigilian hernia	0154	28.7847	$1,708.17	$464.85	$341.63
49600	T		Repair umbilical lesion	0154	28.7847	$1,708.17	$464.85	$341.63
49605	C		Repair umbilical lesion					
49606	C		Repair umbilical lesion					
49610	C		Repair umbilical lesion					
49611	C		Repair umbilical lesion					
49650	T		Laparo hernia repair initial	0131	43.3389	$2,571.86	$1,001.89	$514.37
49651	T		Laparo hernia repair recur	0131	43.3389	$2,571.86	$1,001.89	$514.37
49659	T		Laparo proc, hernia repair	0130	31.9271	$1,894.65	$659.53	$378.93
49900	C		Repair of abdominal wall					
49904	C		Omental flap, extra-abdom					
49905	C		Omental flap					
49906	C		Free omental flap, microvasc					
49999	T		Abdomen surgery procedure	0153	21.6961	$1,287.51	$382.75	$257.50
50010	C		Exploration of kidney					
50020	T		Renal abscess, open drain	0162	23.3918	$1,388.14		$277.63
50021	T		Renal abscess, percut drain	0037	9.4751	$562.28	$224.91	$112.46
50040	C		Drainage of kidney					
50045	C		Exploration of kidney					
50060	C		Removal of kidney stone					
50065	C		Incision of kidney					
50070	C		Incision of kidney					
50075	C		Removal of kidney stone					
50080	T		Removal of kidney stone	0429	42.3147	$2,511.08		$502.22
50081	T		Removal of kidney stone	0429	42.3147	$2,511.08		$502.22
50100	C		Revise kidney blood vessels					
50120	C		Exploration of kidney					
50125	C		Explore and drain kidney					
50130	C		Removal of kidney stone					
50135	C		Exploration of kidney					
50200	T		Biopsy of kidney	0685	6.0174	$357.09	$115.47	$71.42
50205	C		Biopsy of kidney					
50220	C		Remove kidney, open					
50225	C		Removal kidney open, complex					
50230	C		Removal kidney open, radical					
50234	C		Removal of kidney & ureter					
50236	C		Removal of kidney & ureter					
50240	C		Partial removal of kidney					
50280	C		Removal of kidney lesion					
50290	C		Removal of kidney lesion					
50300	C		Removal of donor kidney					
50320	C		Removal of donor kidney					
50323	C		Prep cadaver renal allograft					
50325	C		Prep donor renal graft					
50327	C		Prep renal graft/venous					
50328	C		Prep renal graft/arterial					
50329	C		Prep renal graft/ureteral					
50340	C		Removal of kidney					
50360	C		Transplantation of kidney					
50365	C		Transplantation of kidney					
50370	C		Remove transplanted kidney					
50380	C		Reimplantation of kidney					
50390	T		Drainage of kidney lesion	0685	6.0174	$357.09	$115.47	$71.42
50391	T		Instll rx agnt into rnal tub	0156	2.5751	$152.81	$40.52	$30.56
50392	T		Insert kidney drain	0161	18.5576	$1,101.26	$249.36	$220.25
50393	T		Insert ureteral tube	0161	18.5576	$1,101.26	$249.36	$220.25
50394	N		Injection for kidney x-ray					
50395	T		Create passage to kidney	0161	18.5576	$1,101.26	$249.36	$220.25
50396	T		Measure kidney pressure	0164	1.1855	$70.35	$17.29	$14.07
50398	T		Change kidney tube	0122	6.9721	$413.75	$84.85	$82.75
50400	C		Revision of kidney/ureter					
50405	C		Revision of kidney/ureter					
50500	C		Repair of kidney wound					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
50520	C		Close kidney-skin fistula					
50525	C		Repair renal-abdomen fistula					
50526	C		Repair renal-abdomen fistula					
50540	C		Revision of horseshoe kidney					
50541	T		Laparo ablate renal cyst	0130	31.9271	$1,894.65	$659.53	$378.93
50542	T		Laparo ablate renal mass	0131	43.3389	$2,571.86	$1,001.89	$514.37
50543	T		Laparo partial nephrectomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
50544	T		Laparoscopy, pyeloplasty	0130	31.9271	$1,894.65	$659.53	$378.93
50545	C		Laparo radical nephrectomy					
50546	C		Laparoscopic nephrectomy					
50547	C		Laparo removal donor kidney					
50548	C		Laparo remove w/ ureter					
50549	T		Laparoscope proc, renal	0130	31.9271	$1,894.65	$659.53	$378.93
50551	T		Kidney endoscopy	0160	6.6753	$396.13	$105.06	$79.23
50553	T		Kidney endoscopy	0161	18.5576	$1,101.26	$249.36	$220.25
50555	T		Kidney endoscopy & biopsy	0160	6.6753	$396.13	$105.06	$79.23
50557	T		Kidney endoscopy & treatment	0162	23.3918	$1,388.14		$277.63
50561	T		Kidney endoscopy & treatment	0161	18.5576	$1,101.26	$249.36	$220.25
50562	T		Renal scope w/tumor resect	0160	6.6753	$396.13	$105.06	$79.23
50570	T		Kidney endoscopy	0160	6.6753	$396.13	$105.06	$79.23
50572	T		Kidney endoscopy	0160	6.6753	$396.13	$105.06	$79.23
50574	T		Kidney endoscopy & biopsy	0160	6.6753	$396.13	$105.06	$79.23
50575	T		Kidney endoscopy	0163	33.7354	$2,001.96		$400.39
50576	T		Kidney endoscopy & treatment	0161	18.5576	$1,101.26	$249.36	$220.25
50580	C		Kidney endoscopy & treatment					
50590	T		Fragmenting of kidney stone	0169	43.0133	$2,552.54	$1,021.01	$510.51
50600	C		Exploration of ureter					
50605	C		Insert ureteral support					
50610	C		Removal of ureter stone					
50620	C		Removal of ureter stone					
50630	C		Removal of ureter stone					
50650	C		Removal of ureter					
50660	C		Removal of ureter					
50684	N		Injection for ureter x-ray					
50686	T		Measure ureter pressure	0164	1.1855	$70.35	$17.29	$14.07
50688	T		Change of ureter tube	0122	6.9721	$413.75	$84.85	$82.75
50690	N		Injection for ureter x-ray					
50700	C		Revision of ureter					
50715	C		Release of ureter					
50722	C		Release of ureter					
50725	C		Release/revise ureter					
50727	C		Revise ureter					
50728	C		Revise ureter					
50740	C		Fusion of ureter & kidney					
50750	C		Fusion of ureter & kidney					
50760	C		Fusion of ureters					
50770	C		Splicing of ureters					
50780	C		Reimplant ureter in bladder					
50782	C		Reimplant ureter in bladder					
50783	C		Reimplant ureter in bladder					
50785	C		Reimplant ureter in bladder					
50800	C		Implant ureter in bowel					
50810	C		Fusion of ureter & bowel					
50815	C		Urine shunt to intestine					
50820	C		Construct bowel bladder					
50825	C		Construct bowel bladder					
50830	C		Revise urine flow					
50840	C		Replace ureter by bowel					
50845	C		Appendico-vesicostomy					
50860	C		Transplant ureter to skin					
50900	C		Repair of ureter					
50920	C		Closure ureter/skin fistula					
50930	C		Closure ureter/bowel fistula					
50940	C		Release of ureter					
50945	T		Laparoscopy ureterolithotomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
50947	T		Laparo new ureter/bladder	0131	43.3389	$2,571.86	$1,001.89	$514.37

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
50948	T		Laparo new ureter/bladder	0131	43.3389	$2,571.86	$1,001.89	$514.37
50949	T		Laparoscope proc, ureter	0130	31.9271	$1,894.65	$659.53	$378.93
50951	T		Endoscopy of ureter	0160	6.6753	$396.13	$105.06	$79.23
50953	T		Endoscopy of ureter	0160	6.6753	$396.13	$105.06	$79.23
50955	T		Ureter endoscopy & biopsy	0161	18.5576	$1,101.26	$249.36	$220.25
50957	T		Ureter endoscopy & treatment	0161	18.5576	$1,101.26	$249.36	$220.25
50961	T		Ureter endoscopy & treatment	0161	18.5576	$1,101.26	$249.36	$220.25
50970	T		Ureter endoscopy	0160	6.6753	$396.13	$105.06	$79.23
50972	T		Ureter endoscopy & catheter	0160	6.6753	$396.13	$105.06	$79.23
50974	T		Ureter endoscopy & biopsy	0161	18.5576	$1,101.26	$249.36	$220.25
50976	T		Ureter endoscopy & treatment	0161	18.5576	$1,101.26	$249.36	$220.25
50980	T		Ureter endoscopy & treatment	0161	18.5576	$1,101.26	$249.36	$220.25
51000	T		Drainage of bladder	0164	1.1855	$70.35	$17.29	$14.07
51005	T		Drainage of bladder	0164	1.1855	$70.35	$17.29	$14.07
51010	T		Drainage of bladder	0165	16.6689	$989.18		$197.84
51020	T		Incise & treat bladder	0162	23.3918	$1,388.14		$277.63
51030	T		Incise & treat bladder	0162	23.3918	$1,388.14		$277.63
51040	T		Incise & drain bladder	0162	23.3918	$1,388.14		$277.63
51045	T		Incise bladder/drain ureter	0160	6.6753	$396.13	$105.06	$79.23
51050	T		Removal of bladder stone	0162	23.3918	$1,388.14		$277.63
51060	C		Removal of ureter stone					
51065	T		Remove ureter calculus	0162	23.3918	$1,388.14		$277.63
51080	T		Drainage of bladder abscess	0008	16.4989	$979.09		$195.82
51500	T		Removal of bladder cyst	0154	28.7847	$1,708.17	$464.85	$341.63
51520	T		Removal of bladder lesion	0162	23.3918	$1,388.14		$277.63
51525	C		Removal of bladder lesion					
51530	C		Removal of bladder lesion					
51535	C		Repair of ureter lesion					
51550	C		Partial removal of bladder					
51555	C		Partial removal of bladder					
51565	C		Revise bladder & ureter(s)					
51570	C		Removal of bladder					
51575	C		Removal of bladder & nodes					
51580	C		Remove bladder/revise tract					
51585	C		Removal of bladder & nodes					
51590	C		Remove bladder/revise tract					
51595	C		Remove bladder/revise tract					
51596	C		Remove bladder/create pouch					
51597	C		Removal of pelvic structures					
51600	N		Injection for bladder x-ray					
51605	N		Preparation for bladder xray					
51610	N		Injection for bladder x-ray					
51700	T		Irrigation of bladder	0164	1.1855	$70.35	$17.29	$14.07
51701	X		Insert bladder catheter	0340	0.6384	$37.88		$7.58
51702	X		Insert temp bladder cath	0340	0.6384	$37.88		$7.58
51703	T		Insert bladder cath, complex	0164	1.1855	$70.35	$17.29	$14.07
51705	T		Change of bladder tube	0121	2.2766	$135.10	$43.80	$27.02
51710	T		Change of bladder tube	0122	6.9721	$413.75	$84.85	$82.75
51715	T		Endoscopic injection/implant	0168	28.2685	$1,677.54	$388.03	$335.51
51720	T		Treatment of bladder lesion	0156	2.5751	$152.81	$40.52	$30.56
51725	T		Simple cystometrogram	0156	2.5751	$152.81	$40.52	$30.56
51726	T		Complex cystometrogram	0156	2.5751	$152.81	$40.52	$30.56
51736	T		Urine flow measurement	0164	1.1855	$70.35	$17.29	$14.07
51741	T		Electro-uroflowmetry, first	0164	1.1855	$70.35	$17.29	$14.07
51772	T		Urethra pressure profile	0156	2.5751	$152.81	$40.52	$30.56
51784	T		Anal/urinary muscle study	0164	1.1855	$70.35	$17.29	$14.07
51785	T		Anal/urinary muscle study	0164	1.1855	$70.35	$17.29	$14.07
51792	T		Urinary reflex study	0164	1.1855	$70.35	$17.29	$14.07
51795	T		Urine voiding pressure study	0164	1.1855	$70.35	$17.29	$14.07
51797	T		Intraabdominal pressure test	0164	1.1855	$70.35	$17.29	$14.07
51798	X		Us urine capacity measure	0340	0.6384	$37.88		$7.58
51800	C		Revision of bladder/urethra					
51820	C		Revision of urinary tract					
51840	C		Attach bladder/urethra					
51841	C		Attach bladder/urethra					
51845	C		Repair bladder neck					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
51860	C		Repair of bladder wound					
51865	C		Repair of bladder wound					
51880	T		Repair of bladder opening	0162	23.3918	$1,388.14		$277.63
51900	C		Repair bladder/vagina lesion					
51920	C		Close bladder-uterus fistula					
51925	C		Hysterectomy/bladder repair					
51940	C		Correction of bladder defect					
51960	C		Revision of bladder & bowel					
51980	C		Construct bladder opening					
51990	T		Laparo urethral suspension	0131	43.3389	$2,571.86	$1,001.89	$514.37
51992	T		Laparo sling operation	0132	62.9914	$3,738.10	$1,239.22	$747.62
52000	T		Cystoscopy	0160	6.6753	$396.13	$105.06	$79.23
52001	T		Cystoscopy, removal of clots	0160	6.6753	$396.13	$105.06	$79.23
52005	T		Cystoscopy & ureter catheter	0161	18.5576	$1,101.26	$249.36	$220.25
52007	T		Cystoscopy and biopsy	0161	18.5576	$1,101.26	$249.36	$220.25
52010	T		Cystoscopy & duct catheter	0160	6.6753	$396.13	$105.06	$79.23
52204	T		Cystoscopy	0161	18.5576	$1,101.26	$249.36	$220.25
52214	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52224	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52234	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52235	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52240	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52250	T		Cystoscopy and radiotracer	0162	23.3918	$1,388.14		$277.63
52260	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52265	T		Cystoscopy and treatment	0160	6.6753	$396.13	$105.06	$79.23
52270	T		Cystoscopy & revise urethra	0161	18.5576	$1,101.26	$249.36	$220.25
52275	T		Cystoscopy & revise urethra	0161	18.5576	$1,101.26	$249.36	$220.25
52276	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52277	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52281	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52282	T		Cystoscopy, implant stent	0163	33.7354	$2,001.96		$400.39
52283	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52285	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52290	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52300	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52301	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52305	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52310	T		Cystoscopy and treatment	0160	6.6753	$396.13	$105.06	$79.23
52315	T		Cystoscopy and treatment	0161	18.5576	$1,101.26	$249.36	$220.25
52317	T		Remove bladder stone	0162	23.3918	$1,388.14		$277.63
52318	T		Remove bladder stone	0162	23.3918	$1,388.14		$277.63
52320	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52325	T		Cystoscopy, stone removal	0162	23.3918	$1,388.14		$277.63
52327	T		Cystoscopy, inject material	0162	23.3918	$1,388.14		$277.63
52330	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52332	T		Cystoscopy and treatment	0162	23.3918	$1,388.14		$277.63
52334	T		Create passage to kidney	0162	23.3918	$1,388.14		$277.63
52341	T		Cysto w/ureter stricture tx	0162	23.3918	$1,388.14		$277.63
52342	T		Cysto w/up stricture tx	0162	23.3918	$1,388.14		$277.63
52343	T		Cysto w/renal stricture tx	0162	23.3918	$1,388.14		$277.63
52344	T		Cysto/uretero, stone remove	0162	23.3918	$1,388.14		$277.63
52345	T		Cysto/uretero w/up stricture	0162	23.3918	$1,388.14		$277.63
52346	T		Cystouretero w/renal strict	0162	23.3918	$1,388.14		$277.63
52351	T		Cystouretero & or pyeloscope	0161	18.5576	$1,101.26	$249.36	$220.25
52352	T		Cystouretero w/stone remove	0162	23.3918	$1,388.14		$277.63
52353	T		Cystouretero w/lithotripsy	0163	33.7354	$2,001.96		$400.39
52354	T		Cystouretero w/biopsy	0162	23.3918	$1,388.14		$277.63
52355	T		Cystouretero w/excise tumor	0162	23.3918	$1,388.14		$277.63
52400	T		Cystouretero w/congen repr	0162	23.3918	$1,388.14		$277.63
52402	T		Cystourethro cut ejacul duct	0162	23.3918	$1,388.14		$277.63
52450	T		Incision of prostate	0162	23.3918	$1,388.14		$277.63
52500	T		Revision of bladder neck	0162	23.3918	$1,388.14		$277.63
52510	T		Dilation prostatic urethra	0161	18.5576	$1,101.26	$249.36	$220.25
52601	T		Prostatectomy (TURP)	0163	33.7354	$2,001.96		$400.39
52606	T		Control postop bleeding	0162	23.3918	$1,388.14		$277.63
52612	T		Prostatectomy, first stage	0163	33.7354	$2,001.96		$400.39

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
52614	T		Prostatectomy, second stage	0163	33.7354	$2,001.96		$400.39
52620	T		Remove residual prostate	0163	33.7354	$2,001.96		$400.39
52630	T		Remove prostate regrowth	0163	33.7354	$2,001.96		$400.39
52640	T		Relieve bladder contracture	0162	23.3918	$1,388.14		$277.63
52647	T		Laser surgery of prostate	0429	42.3147	$2,511.08		$502.22
52648	T		Laser surgery of prostate	0429	42.3147	$2,511.08		$502.22
52700	T		Drainage of prostate abscess	0162	23.3918	$1,388.14		$277.63
53000	T		Incision of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53010	T		Incision of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53020	T		Incision of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53025	T		Incision of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53040	T		Drainage of urethra abscess	0166	17.6743	$1,048.85	$218.73	$209.77
53060	T		Drainage of urethra abscess	0166	17.6743	$1,048.85	$218.73	$209.77
53080	T		Drainage of urinary leakage	0166	17.6743	$1,048.85	$218.73	$209.77
53085	T		Drainage of urinary leakage	0166	17.6743	$1,048.85	$218.73	$209.77
53200	T		Biopsy of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53210	T		Removal of urethra	0168	28.2685	$1,677.54	$388.03	$335.51
53215	T		Removal of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53220	T		Treatment of urethra lesion	0168	28.2685	$1,677.54	$388.03	$335.51
53230	T		Removal of urethra lesion	0168	28.2685	$1,677.54	$388.03	$335.51
53235	T		Removal of urethra lesion	0166	17.6743	$1,048.85	$218.73	$209.77
53240	T		Surgery for urethra pouch	0168	28.2685	$1,677.54	$388.03	$335.51
53250	T		Removal of urethra gland	0166	17.6743	$1,048.85	$218.73	$209.77
53260	T		Treatment of urethra lesion	0166	17.6743	$1,048.85	$218.73	$209.77
53265	T		Treatment of urethra lesion	0166	17.6743	$1,048.85	$218.73	$209.77
53270	T		Removal of urethra gland	0166	17.6743	$1,048.85	$218.73	$209.77
53275	T		Repair of urethra defect	0166	17.6743	$1,048.85	$218.73	$209.77
53400	T		Revise urethra, stage 1	0168	28.2685	$1,677.54	$388.03	$335.51
53405	T		Revise urethra, stage 2	0168	128.2685	$1,677.54	$388.03	$335.51
53410	T		Reconstruction of urethra	0168	28.2685	$1,677.54	$388.03	$335.51
53415	C		Reconstruction of urethra					
53420	T		Reconstruct urethra, stage 1	0168	28.2685	$1,677.54	$388.03	$335.51
53425	T		Reconstruct urethra, stage 2	0168	28.2685	$1,677.54	$388.03	$335.51
53430	T		Reconstruction of urethra	0168	28.2685	$1,677.54	$388.03	$335.51
53431	T		Reconstruct urethra/bladder	0168	28.2685	$1,677.54	$388.03	$335.51
53440	S		Correct bladder function	0385	75.6446	$4,488.98		$897.80
53442	T		Remove perineal prosthesis	0168	28.2685	$1,677.54	$388.03	$335.51
53444	S		Insert tandem cuff	0385	75.6446	$4,488.98		$897.80
53445	S		Insert uro/ves nck sphincter	0386	120.1694	$7,131.21		$1,426.24
53446	T		Remove uro sphincter	0168	28.2685	$1,677.54	$388.03	$335.51
53447	S		Remove/replace ur sphincter	0386	120.1694	$7,131.21		$1,426.24
53448	C		Remov/replc ur sphinctr comp					
53449	T		Repair uro sphincter	0168	28.2685	$1,677.54	$388.03	$335.51
53450	T		Revision of urethra	0168	28.2685	$1,677.54	$388.03	$335.51
53460	T		Revision of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53500	T		Urethrlys, transvag w/ scope	0168	28.2685	$1,677.54	$388.03	$335.51
53502	T		Repair of urethra injury	0166	17.6743	$1,048.85	$218.73	$209.77
53505	T		Repair of urethra injury	0168	28.2685	$1,677.54	$388.03	$335.51
53510	T		Repair of urethra injury	0166	17.6743	$1,048.85	$218.73	$209.77
53515	T		Repair of urethra injury	0168	28.2685	$1,677.54	$388.03	$335.51
53520	T		Repair of urethra defect	0168	28.2685	$1,677.54	$388.03	$335.51
53600	T		Dilate urethra stricture	0156	2.5751	$152.81	$40.52	$30.56
53601	T		Dilate urethra stricture	0164	1.1855	$70.35	$17.29	$14.07
53605	T		Dilate urethra stricture	0161	18.5576	$1,101.26	$249.36	$220.25
53620	T		Dilate urethra stricture	0165	16.6689	$989.18		$197.84
53621	T		Dilate urethra stricture	0164	1.1855	$70.35	$17.29	$14.07
53660	T		Dilation of urethra	0164	1.1855	$70.35	$17.29	$14.07
53661	T		Dilation of urethra	0164	1.1855	$70.35	$17.29	$14.07
53665	T		Dilation of urethra	0166	17.6743	$1,048.85	$218.73	$209.77
53850	T		Prostatic microwave thermotx	0675	43.7329	$2,595.24		$519.05
53852	T		Prostatic rf thermotx	0675	43.7329	$2,595.24		$519.05
53853	T		Prostatic water thermother	0162	23.3918	$1,388.14		$277.63
53899	T		Urology surgery procedure	0164	1.1855	$70.35	$17.29	$14.07
54000	T		Slitting of prepuce	0166	17.6743	$1,048.85	$218.73	$209.77
54001	T		Slitting of prepuce	0166	17.6743	$1,048.85	$218.73	$209.77
54015	T		Drain penis lesion	0008	16.4989	$979.09		$195.82

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
54050	T		Destruction, penis lesion(s)	0013	1.1078	$65.74	$14.20	$13.15
54055	T		Destruction, penis lesion(s)	0017	18.4211	$1,093.16	$227.84	$218.63
54056	T		Cryosurgery, penis lesion(s)	0012	0.8497	$50.42	$11.18	$10.08
54057	T		Laser surg, penis lesion(s)	0017	18.4211	$1,093.16	$227.84	$218.63
54060	T		Excision of penis lesion(s)	0017	18.4211	$1,093.16	$227.84	$218.63
54065	T		Destruction, penis lesion(s)	0695	20.3164	$1,205.64	$266.59	$241.13
54100	T		Biopsy of penis	0021	14.9776	$888.82	$219.48	$177.76
54105	T		Biopsy of penis	0022	19.6472	$1,165.92	$354.45	$233.18
54110	T		Treatment of penis lesion	0181	30.8663	$1,831.70	$621.82	$366.34
54111	T		Treat penis lesion, graft	0181	30.8663	$1,831.70	$621.82	$366.34
54112	T		Treat penis lesion, graft	0181	30.8663	$1,831.70	$621.82	$366.34
54115	T		Treatment of penis lesion	0008	16.4989	$979.09		$195.82
54120	T		Partial removal of penis	0181	30.8663	$1,831.70	$621.82	$366.34
54125	C		Removal of penis					
54130	C		Remove penis & nodes					
54135	C		Remove penis & nodes					
54150	T		Circumcision	0180	19.8827	$1,179.90	$304.87	$235.98
54152	T		Circumcision	0180	19.8827	$1,179.90	$304.87	$235.98
54160	T		Circumcision	0180	19.8827	$1,179.90	$304.87	$235.98
54161	T		Circumcision	0180	19.8827	$1,179.90	$304.87	$235.98
54162	T		Lysis penil circumic lesion	0180	19.8827	$1,179.90	$304.87	$235.98
54163	T		Repair of circumcision	0180	19.8827	$1,179.90	$304.87	$235.98
54164	T		Frenulotomy of penis	0180	19.8827	$1,179.90	$304.87	$235.98
54200	T		Treatment of penis lesion	0156	2.5751	$152.81	$40.52	$30.56
54205	T		Treatment of penis lesion	0181	30.8663	$1,831.70	$621.82	$366.34
54220	T		Treatment of penis lesion	0156	2.5751	$152.81	$40.52	$30.56
54230	N		Prepare penis study					
54231	T		Dynamic cavernosometry	0165	16.6689	$989.18		$197.84
54235	T		Penile injection	0164	1.1855	$70.35	$17.29	$14.07
54240	T		Penis study	0164	1.1855	$70.35	$17.29	$14.07
54250	T		Penis study	0164	1.1855	$70.35	$17.29	$14.07
54300	T		Revision of penis	0181	30.8663	$1,831.70	$621.82	$366.34
54304	T		Revision of penis	0181	30.8663	$1,831.70	$621.82	$366.34
54308	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54312	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54316	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54318	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54322	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54324	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54326	T		Reconstruction of urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54328	T		Revise penis/urethra	0181	30.8663	$1,831.70	$621.82	$366.34
54332	C		Revise penis/urethra					
54336	C		Revise penis/urethra					
54340	T		Secondary urethral surgery	0181	30.8663	$1,831.70	$621.82	$366.34
54344	T		Secondary urethral surgery	0181	30.8663	$1,831.70	$621.82	$366.34
54348	T		Secondary urethral surgery	0181	30.8663	$1,831.70	$621.82	$366.34
54352	T		Reconstruct urethra/penis	0181	30.8663	$1,831.70	$621.82	$366.34
54360	T		Penis plastic surgery	0181	30.8663	$1,831.70	$621.82	$366.34
54380	T		Repair penis	0181	30.8663	$1,831.70	$621.82	$366.34
54385	T		Repair penis	0181	30.8663	$1,831.70	$621.82	$366.34
54390	C		Repair penis and bladder					
54400	S		Insert semi-rigid prosthesis	0385	75.6446	$4,488.98		$897.80
54401	S		Insert self-contd prosthesis	0386	120.1694	$7,131.21		$1,426.24
54405	S		Insert multi-comp penis pros	0386	120.1694	$7,131.21		$1,426.24
54406	T		Remove muti-comp penis pros	0181	30.8663	$1,831.70	$621.82	$366.34
54408	T		Repair multi-comp penis pros	0181	30.8663	$1,831.70	$621.82	$366.34
54410	S		Remove/replace penis prosth	0386	120.1694	$7,131.21		$1,426.24
54411	C		Remov/replc penis pros, comp					
54415	T		Remove self-contd penis pros	0181	30.8663	$1,831.70	$621.82	$366.34
54416	S		Remv/repl penis contain pros	0386	120.1694	$7,131.21		$1,426.24
54417	C		Remv/replc penis pros, compl					
54420	T		Revision of penis	0181	30.8663	$1,831.70	$621.82	$366.34
54430	C		Revision of penis					
54435	T		Revision of penis	0181	30.8663	$1,831.70	$621.82	$366.34
54440	T		Repair of penis	0181	30.8663	$1,831.70	$621.82	$366.34
54450	T		Preputial stretching	0156	2.5751	$152.81	$40.52	$30.56

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
54500	T		Biopsy of testis	0037	9.4751	$562.28	$224.91	$112.46
54505	T		Biopsy of testis	0183	23.6415	$1,402.96		$280.59
54512	T		Excise lesion testis	0183	23.6415	$1,402.96		$280.59
54520	T		Removal of testis	0183	23.6415	$1,402.96		$280.59
54522	T		Orchiectomy, partial	0183	23.6415	$1,402.96		$280.59
54530	T		Removal of testis	0154	28.7847	$1,708.17	$464.85	$341.63
54535	C		Extensive testis surgery					
54550	T		Exploration for testis	0154	28.7847	$1,708.17	$464.85	$341.63
54560	T		Exploration for testis	0183	23.6415	$1,402.96		$280.59
54600	T		Reduce testis torsion	0183	23.6415	$1,402.96		$280.59
54620	T		Suspension of testis	0183	23.6415	$1,402.96		$280.59
54640	T		Suspension of testis	0154	28.7847	$1,708.17	$464.85	$341.63
54650	C		Orchiopexy (Fowler-Stephens)					
54660	T		Revision of testis	0183	23.6415	$1,402.96		$280.59
54670	T		Repair testis injury	0183	23.6415	$1,402.96		$280.59
54680	T		Relocation of testis(es)	0183	23.6415	$1,402.96		$280.59
54690	T		Laparoscopy, orchiectomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
54692	T		Laparoscopy, orchiopexy	0132	62.9914	$3,738.10	$1,239.22	$747.62
54699	T		Laparoscope proc, testis	0130	31.9271	$1,894.65	$659.53	$378.93
54700	T		Drainage of scrotum	0183	23.6415	$1,402.96		$280.59
54800	T		Biopsy of epididymis	0004	1.7646	$104.72	$22.36	$20.94
54820	T		Exploration of epididymis	0183	23.6415	$1,402.96		$280.59
54830	T		Remove epididymis lesion	0183	23.6415	$1,402.96		$280.59
54840	T		Remove epididymis lesion	0183	23.6415	$1,402.96		$280.59
54860	T		Removal of epididymis	0183	23.6415	$1,402.96		$280.59
54861	T		Removal of epididymis	0183	23.6415	$1,402.96		$280.59
54900	T		Fusion of spermatic ducts	0183	23.6415	$1,402.96		$280.59
54901	T		Fusion of spermatic ducts	0183	23.6415	$1,402.96		$280.59
55000	T		Drainage of hydrocele	0004	1.7646	$104.72	$22.36	$20.94
55040	T		Removal of hydrocele	0154	28.7847	$1,708.17	$464.85	$341.63
55041	T		Removal of hydroceles	0154	28.7847	$1,708.17	$464.85	$341.63
55060	T		Repair of hydrocele	0183	23.6415	$1,402.96		$280.59
55100	T		Drainage of scrotum abscess	0008	16.4989	$979.09		$195.82
55110	T		Explore scrotum	0183	23.6415	$1,402.96		$280.59
55120	T		Removal of scrotum lesion	0183	23.6415	$1,402.96		$280.59
55150	T		Removal of scrotum	0183	23.6415	$1,402.96		$280.59
55175	T		Revision of scrotum	0183	23.6415	$1,402.96		$280.59
55180	T		Revision of scrotum	0183	23.6415	$1,402.96		$280.59
55200	T		Incision of sperm duct	0183	23.6415	$1,402.96		$280.59
55250	T		Removal of sperm duct(s)	0183	23.6415	$1,402.96		$280.59
55300	N		Prepare, sperm duct x-ray					
55400	T		Repair of sperm duct	0183	23.6415	$1,402.96		$280.59
55450	T		Ligation of sperm duct	0183	23.6415	$1,402.96		$280.59
55500	T		Removal of hydrocele	0183	23.6415	$1,402.96		$280.59
55520	T		Removal of sperm cord lesion	0183	23.6415	$1,402.96		$280.59
55530	T		Revise spermatic cord veins	0183	23.6415	$1,402.96		$280.59
55535	T		Revise spermatic cord veins	0154	28.7847	$1,708.17	$464.85	$341.63
55540	T		Revise hernia & sperm veins	0154	28.7847	$1,708.17	$464.85	$341.63
55550	T		Laparo ligate spermatic vein	0131	43.3389	$2,571.86	$1,001.89	$514.37
55559	T		Laparo proc, spermatic cord	0130	31.9271	$1,894.65	$659.53	$378.93
55600	T		Incise sperm duct pouch	0183	23.6415	$1,402.96		$280.59
55605	C		Incise sperm duct pouch					
55650	C		Remove sperm duct pouch					
55680	T		Remove sperm pouch lesion	0183	23.6415	$1,402.96		$280.59
55700	T		Biopsy of prostate	0184	4.3566	$258.53	$96.27	$51.71
55705	T		Biopsy of prostate	0184	4.3566	$258.53	$96.27	$51.71
55720	T		Drainage of prostate abscess	0162	23.3918	$1,388.14		$277.63
55725	T		Drainage of prostate abscess	0162	23.3918	$1,388.14		$277.63
55801	C		Removal of prostate					
55810	C		Extensive prostate surgery					
55812	C		Extensive prostate surgery					
55815	C		Extensive prostate surgery					
55821	C		Removal of prostate					
55831	C		Removal of prostate					
55840	C		Extensive prostate surgery					
55842	C		Extensive prostate surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
55845	C		Extensive prostate surgery					
55859	T		Percut/needle insert, pros	0163	33.7354	$2,001.96		$400.39
55860	T		Surgical exposure, prostate	0165	16.6689	$989.18		$197.84
55862	C		Extensive prostate surgery					
55865	C		Extensive prostate surgery					
55866	C		Laparo radical prostatectomy					
55870	T		Electroejaculation	0197	2.3572	$139.88		$27.98
55873	T		Cryoablate prostate	0674	95.7856	$5,684.20		$1,136.84
55899	T		Genital surgery procedure	0164	1.1855	$70.35	$17.29	$14.07
55970	E		Sex transformation, M to F					
55980	E		Sex transformation, F to M					
56405	T		I & D of vulva/perineum	0189	2.371	$140.70		$28.14
56420	T		Drainage of gland abscess	0189	2.371	$140.70		$28.14
56440	T		Surgery for vulva lesion	0194	20.7525	$1,231.52	$397.84	$246.30
56441	T		Lysis of labial lesion(s)	0193	14.5843	$865.48		$173.10
56501	T		Destroy, vulva lesions, sim	0017	18.4211	$1,093.16	$227.84	$218.63
56515	T		Destroy vulva lesion/s compl	0695	20.3164	$1,205.64	$266.59	$241.13
56605	T		Biopsy of vulva/perineum	0019	4.0547	$240.62	$71.87	$48.12
56606	T		Biopsy of vulva/perineum	0019	4.0547	$240.62	$71.87	$48.12
56620	T		Partial removal of vulva	0195	26.6791	$1,583.22	$483.80	$316.64
56625	T		Complete removal of vulva	0195	26.6791	$1,583.22	$483.80	$316.64
56630	C		Extensive vulva surgery					
56631	C		Extensive vulva surgery					
56632	C		Extensive vulva surgery					
56633	C		Extensive vulva surgery					
56634	C		Extensive vulva surgery					
56637	C		Extensive vulva surgery					
56640	C		Extensive vulva surgery					
56700	T		Partial removal of hymen	0194	20.7525	$1,231.52	$397.84	$246.30
56720	T		Incision of hymen	0193	14.5843	$865.48		$173.10
56740	T		Remove vagina gland lesion	0194	20.7525	$1,231.52	$397.84	$246.30
56800	T		Repair of vagina	0194	20.7525	$1,231.52	$397.84	$246.30
56805	T		Repair clitoris	0193	14.5843	$865.48		$173.10
56810	T		Repair of perineum	0194	20.7525	$1,231.52	$397.84	$246.30
56820	T		Exam of vulva w/scope	0188	1.14	$67.65		$13.53
56821	T		Exam/biopsy of vulva w/scope	0189	2.371	$140.70		$28.14
57000	T		Exploration of vagina	0193	14.5843	$865.48		$173.10
57010	T		Drainage of pelvic abscess	0193	14.5843	$865.48		$173.10
57020	T		Drainage of pelvic fluid	0192	4.3082	$255.66		$51.13
57022	T		I & d vaginal hematoma, pp	0007	11.4501	$679.48		$135.90
57023	T		I & d vag hematoma, non-ob	0008	16.4989	$979.09		$195.82
57061	T		Destroy vag lesions, simple	0194	20.7525	$1,231.52	$397.84	$246.30
57065	T		Destroy vag lesions, complex	0194	20.7525	$1,231.52	$397.84	$246.30
57100	T		Biopsy of vagina	0192	4.3082	$255.66		$51.13
57105	T		Biopsy of vagina	0194	20.7525	$1,231.52	$397.84	$246.30
57106	T		Remove vagina wall, partial	0194	20.7525	$1,231.52	$397.84	$246.30
57107	T		Remove vagina tissue, part	0195	26.6791	$1,583.22	$483.80	$316.64
57109	T		Vaginectomy partial w/nodes	0195	26.6791	$1,583.22	$483.80	$316.64
57110	C		Remove vagina wall, complete					
57111	C		Remove vagina tissue, compl					
57112	C		Vaginectomy w/nodes, compl					
57120	T		Closure of vagina	0195	26.6791	$1,583.22	$483.80	$316.64
57130	T		Remove vagina lesion	0194	20.7525	$1,231.52	$397.84	$246.30
57135	T		Remove vagina lesion	0194	20.7525	$1,231.52	$397.84	$246.30
57150	T		Treat vagina infection	0191	0.167	$9.91	$2.78	$1.98
57155	T		Insert uteri tandems/ovoids	0192	4.3082	$255.66		$51.13
57160	T		Insert pessary/other device	0188	1.14	$67.65		$13.53
57170	T		Fitting of diaphragm/cap	0191	0.167	$9.91	$2.78	$1.98
57180	T		Treat vaginal bleeding	0189	2.371	$140.70		$28.14
57200	T		Repair of vagina	0194	20.7525	$1,231.52	$397.84	$246.30
57210	T		Repair vagina/perineum	0194	20.7525	$1,231.52	$397.84	$246.30
57220	T		Revision of urethra	0202	40.3866	$2,396.66	$958.66	$479.33
57230	T		Repair of urethral lesion	0195	26.6791	$1,583.22	$483.80	$316.64
57240	T		Repair bladder & vagina	0195	26.6791	$1,583.22	$483.80	$316.64
57250	T		Repair rectum & vagina	0195	26.6791	$1,583.22	$483.80	$316.64
57260	T		Repair of vagina	0195	26.6791	$1,583.22	$483.80	$316.64

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
57265	T		Extensive repair of vagina	0202	40.3866	$2,396.66	$958.66	$479.33
57267	T		Insert mesh/pelvic flr addon	0154	28.7847	$1,708.17	$464.85	$341.63
57268	T		Repair of bowel bulge	0195	26.6791	$1,583.22	$483.80	$316.64
57270	C		Repair of bowel pouch					
57280	C		Suspension of vagina					
57282	C		Repair of vaginal prolapse					
57283	C		Colpopexy, intraperitoneal					
57284	T		Repair paravaginal defect	0202	40.3866	$2,396.66	$958.66	$479.33
57287	T		Revise/remove sling repair	0202	40.3866	$2,396.66	$958.66	$479.33
57288	T		Repair bladder defect	0202	40.3866	$2,396.66	$958.66	$479.33
57289	T		Repair bladder & vagina	0195	26.6791	$1,583.22	$483.80	$316.64
57291	T		Construction of vagina	0195	26.6791	$1,583.22	$483.80	$316.64
57292	C		Construct vagina with graft					
57300	T		Repair rectum-vagina fistula	0195	26.6791	$1,583.22	$483.80	$316.64
57305	C		Repair rectum-vagina fistula					
57307	C		Fistula repair & colostomy					
57308	C		Fistula repair, transperine					
57310	T		Repair urethrovaginal lesion	0202	40.3866	$2,396.66	$958.66	$479.33
57311	C		Repair urethrovaginal lesion					
57320	T		Repair bladder-vagina lesion	0195	26.6791	$1,583.22	$483.80	$316.64
57330	T		Repair bladder-vagina lesion	0195	26.6791	$1,583.22	$483.80	$316.64
57335	C		Repair vagina					
57400	T		Dilation of vagina	0194	20.7525	$1,231.52	$397.84	$246.30
57410	T		Pelvic examination	0193	14.5843	$865.48		$173.10
57415	T		Remove vaginal foreign body	0194	20.7525	$1,231.52	$397.84	$246.30
57420	T		Exam of vagina w/scope	0189	2.371	$140.70		$28.14
57421	T		Exam/biopsy of vag w/scope	0189	2.371	$140.70		$28.14
57425	T		Laparoscopy, surg, colpopexy	0130	31.9271	$1,894.65	$659.53	$378.93
57452	T		Examination of vagina	0189	2.371	$140.70		$28.14
57454	T		Vagina examination & biopsy	0189	2.371	$140.70		$28.14
57455	T		Biopsy of cervix w/scope	0189	2.371	$140.70		$28.14
57456	T		Endocerv curettage w/scope	0189	2.371	$140.70		$28.14
57460	T		Cervix excision	0193	14.5843	$865.48		$173.10
57461	T		Conz of cervix w/scope, leep	0194	20.7525	$1,231.52	$397.84	$246.30
57500	T		Biopsy of cervix	0192	4.3082	$255.66		$51.13
57505	T		Endocervical curettage	0189	2.371	$140.70		$28.14
57510	T		Cauterization of cervix	0193	14.5843	$865.48		$173.10
57511	T		Cryocautery of cervix	0189	2.371	$140.70		$28.14
57513	T		Laser surgery of cervix	0193	14.5843	$865.48		$173.10
57520	T		Conization of cervix	0194	20.7525	$1,231.52	$397.84	$246.30
57522	T		Conization of cervix	0195	26.6791	$1,583.22	$483.80	$316.64
57530	T		Removal of cervix	0195	26.6791	$1,583.22	$483.80	$316.64
57531	C		Removal of cervix, radical					
57540	C		Removal of residual cervix					
57545	C		Remove cervix/repair pelvis					
57550	T		Removal of residual cervix	0195	26.6791	$1,583.22	$483.80	$316.64
57555	T		Remove cervix/repair vagina	0195	26.6791	$1,583.22	$483.80	$316.64
57556	T		Remove cervix, repair bowel	0202	40.3866	$2,396.66	$958.66	$479.33
57700	T		Revision of cervix	0194	20.7525	$1,231.52	$397.84	$246.30
57720	T		Revision of cervix	0194	20.7525	$1,231.52	$397.84	$246.30
57800	T		Dilation of cervical canal	0193	14.5843	$865.48		$173.10
57820	T		D & c of residual cervix	0196	17.0974	$1,014.61	$338.23	$202.92
58100	T		Biopsy of uterus lining	0188	1.14	$67.65		$13.53
58120	T		Dilation and curettage	0196	17.0974	$1,014.61	$338.23	$202.92
58140	C		Removal of uterus lesion					
58145	T		Myomectomy vag method	0195	26.6791	$1,583.22	$483.80	$316.64
58146	C		Myomectomy abdom complex					
58150	C		Total hysterectomy					
58152	C		Total hysterectomy					
58180	C		Partial hysterectomy					
58200	C		Extensive hysterectomy					
58210	C		Extensive hysterectomy					
58240	C		Removal of pelvis contents					
58260	C		Vaginal hysterectomy					
58262	C		Vag hyst including t/o					
58263	C		Vag hyst w/t/o & vag repair					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
58267	C		Vag hyst w/urinary repair					
58270	C		Vag hyst w/enterocele repair					
58275	C		Hysterectomy/revise vagina					
58280	C		Hysterectomy/revise vagina					
58285	C		Extensive hysterectomy					
58290	C		Vag hyst complex					
58291	C		Vag hyst incl t/o, complex					
58292	C		Vag hyst t/o & repair, compl					
58293	C		Vag hyst w/uro repair, compl					
58294	C		Vag hyst w/enterocele, compl					
58300	E		Insert intrauterine device					
58301	T		Remove intrauterine device	0189	2.371	$140.70		$28.14
58321	T		Artificial insemination	0197	2.3572	$139.88		$27.98
58322	T		Artificial insemination	0197	2.3572	$139.88		$27.98
58323	T		Sperm washing	0197	2.3572	$139.88		$27.98
58340	N		Catheter for hysterography					
58345	T		Reopen fallopian tube	0193	14.5843	$865.48		$173.10
58346	T		Insert heyman uteri capsule	0193	14.5843	$865.48		$173.10
58350	T		Reopen fallopian tube	0195	26.6791	$1,583.22	$483.80	$316.64
58353	T		Endometr ablate, thermal	0195	26.6791	$1,583.22	$483.80	$316.64
58356	T		Endometrial cryoablation	0202	40.3866	$2,396.66	$958.66	$479.33
58400	C		Suspension of uterus					
58410	C		Suspension of uterus					
58520	C		Repair of ruptured uterus					
58540	C		Revision of uterus					
58545	T		Laparoscopic myomectomy	0130	31.9271	$1,894.65	$659.53	$378.93
58546	T		Laparo-myomectomy, complex	0131	43.3389	$2,571.86	$1,001.89	$514.37
58550	T		Laparo-asst vag hysterectomy	0132	62.9914	$3,738.10	$1,239.22	$747.62
58552	T		Laparo-vag hyst incl t/o	0131	43.3389	$2,571.86	$1,001.89	$514.37
58553	T		Laparo-vag hyst, complex	0131	43.3389	$2,571.86	$1,001.89	$514.37
58554	T		Laparo-vag hyst w/t/o, compl	0131	43.3389	$2,571.86	$1,001.89	$514.37
58555	T		Hysteroscopy, dx, sep proc	0190	21.0653	$1,250.08	$424.28	$250.02
58558	T		Hysteroscopy, biopsy	0190	21.0653	$1,250.08	$424.28	$250.02
58559	T		Hysteroscopy, lysis	0190	21.0653	$1,250.08	$424.28	$250.02
58560	T		Hysteroscopy, resect septum	0387	32.5445	$1,931.29	$655.55	$386.26
58561	T		Hysteroscopy, remove myoma	0387	32.5445	$1,931.29	$655.55	$386.26
58562	T		Hysteroscopy, remove fb	0190	21.0653	$1,250.08	$424.28	$250.02
58563	T		Hysteroscopy, ablation	0387	32.5445	$1,931.29	$655.55	$386.26
58565	T		Hysteroscopy, sterilization	0202	40.3866	$2,396.66	$958.66	$479.33
58578	T		Laparo proc, uterus	0130	31.9271	$1,894.65	$659.53	$378.93
58579	T		Hysteroscope procedure	0190	21.0653	$1,250.08	$424.28	$250.02
58600	T		Division of fallopian tube	0195	26.6791	$1,583.22	$483.80	$316.64
58605	C		Division of fallopian tube					
58611	C		Ligate oviduct(s) add-on					
58615	T		Occlude fallopian tube(s)	0194	20.7525	$1,231.52	$397.84	$246.30
58660	T		Laparoscopy, lysis	0131	43.3389	$2,571.86	$1,001.89	$514.37
58661	T		Laparoscopy, remove adnexa	0131	43.3389	$2,571.86	$1,001.89	$514.37
58662	T		Laparoscopy, excise lesions	0131	43.3389	$2,571.86	$1,001.89	$514.37
58670	T		Laparoscopy, tubal cautery	0131	43.3389	$2,571.86	$1,001.89	$514.37
58671	T		Laparoscopy, tubal block	0131	43.3389	$2,571.86	$1,001.89	$514.37
58672	T		Laparoscopy, fimbrioplasty	0131	43.3389	$2,571.86	$1,001.89	$514.37
58673	T		Laparoscopy, salpingostomy	0131	43.3389	$2,571.86	$1,001.89	$514.37
58679	T		Laparo proc, oviduct-ovary	0130	31.9271	$1,894.65	$659.53	$378.93
58700	C		Removal of fallopian tube					
58720	C		Removal of ovary/tube(s)					
58740	C		Revise fallopian tube(s)					
58750	C		Repair oviduct					
58752	C		Revise ovarian tube(s)					
58760	C		Remove tubal obstruction					
58770	T		Create new tubal opening	0195	26.6791	$1,583.22	$483.80	$316.64
58800	T		Drainage of ovarian cyst(s)	0193	14.5843	$865.48		$173.10
58805	C		Drainage of ovarian cyst(s)					
58820	T		Drain ovary abscess, open	0195	26.6791	$1,583.22	$483.80	$316.64
58822	C		Drain ovary abscess, percut					
58823	T		Drain pelvic abscess, percut	0193	14.5843	$865.48		$173.10
58825	C		Transposition, ovary(s)					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
58900	T		Biopsy of ovary(s)	0193	14.5843	$865.48		$173.10
58920	T		Partial removal of ovary(s)	0195	26.6791	$1,583.22	$483.80	$316.64
58925	T		Removal of ovarian cyst(s)	0195	26.6791	$1,583.22	$483.80	$316.64
58940	C		Removal of ovary(s)					
58943	C		Removal of ovary(s)					
58950	C		Resect ovarian malignancy					
58951	C		Resect ovarian malignancy					
58952	C		Resect ovarian malignancy					
58953	C		Tah, rad dissect for debulk					
58954	C		Tah rad debulk/lymph remove					
58956	C		Bso, omentectomy w/tah					
58960	C		Exploration of abdomen					
58970	T		Retrieval of oocyte	0197	2.3572	$139.88		$27.98
58974	T		Transfer of embryo	0197	2.3572	$139.88		$27.98
58976	T		Transfer of embryo	0197	2.3572	$139.88		$27.98
58999	T		Genital surgery procedure	0191	0.167	$9.91	$2.78	$1.98
59000	T		Amniocentesis, diagnostic	0198	1.3683	$81.20	$32.19	$16.24
59001	T		Amniocentesis, therapeutic	0192	4.3082	$255.66		$51.13
59012	T		Fetal cord puncture,prenatal	0198	1.3683	$81.20	$32.19	$16.24
59015	T		Chorion biopsy	0198	1.3683	$81.20	$32.19	$16.24
59020	T		Fetal contract stress test	0192	4.3082	$255.66		$51.13
59025	T		Fetal non-stress test	0198	1.3683	$81.20	$32.19	$16.24
59030	T		Fetal scalp blood sample	0198	1.3683	$81.20	$32.19	$16.24
59050	E		Fetal monitor w/report					
59051	B		Fetal monitor/interpret only					
59070	T		Transabdom amnioinfus w/ us	0198	1.3683	$81.20	$32.19	$16.24
59072	T		Umbilical cord occlud w/ us	0198	1.3683	$81.20	$32.19	$16.24
59074	T		Fetal fluid drainage w/ us	0198	1.3683	$81.20	$32.19	$16.24
59076	T		Fetal shunt placement, w/ us	0198	1.3683	$81.20	$32.19	$16.24
59100	T		Remove uterus lesion	0195	26.6791	$1,583.22	$483.80	$316.64
59120	C		Treat ectopic pregnancy					
59121	C		Treat ectopic pregnancy					
59130	C		Treat ectopic pregnancy					
59135	C		Treat ectopic pregnancy					
59136	C		Treat ectopic pregnancy					
59140	C		Treat ectopic pregnancy					
59150	T		Treat ectopic pregnancy	0131	43.3389	$2,571.86	$1,001.89	$514.37
59151	T		Treat ectopic pregnancy	0131	43.3389	$2,571.86	$1,001.89	$514.37
59160	T		D & c after delivery	0196	17.0974	$1,014.61	$338.23	$202.92
59200	T		Insert cervical dilator	0189	2.371	$140.70		$28.14
59300	T		Episiotomy or vaginal repair	0193	14.5843	$865.48		$173.10
59320	T		Revision of cervix	0194	20.7525	$1,231.52	$397.84	$246.30
59325	C		Revision of cervix					
59350	C		Repair of uterus					
59400	B		Obstetrical care					
59409	T		Obstetrical care	0194	20.7525	$1,231.52	$397.84	$246.30
59410	B		Obstetrical care					
59412	T		Antepartum manipulation	0700	5.3614	$318.16		$63.63
59414	T		Deliver placenta	0193	14.5843	$865.48		$173.10
59425	B		Antepartum care only					
59426	B		Antepartum care only					
59430	B		Care after delivery					
59510	E		Cesarean delivery					
59514	C		Cesarean delivery only					
59515	E		Cesarean delivery					
59525	C		Remove uterus after cesarean					
59610	E		Vbac delivery					
59612	T		Vbac delivery only	0194	20.7525	$1,231.52	$397.84	$246.30
59614	E		Vbac care after delivery					
59618	E		Attempted vbac delivery					
59620	C		Attempted vbac delivery only					
59622	E		Attempted vbac after care					
59812	T		Treatment of miscarriage	0201	17.6047	$1,044.72	$329.65	$208.94
59820	T		Care of miscarriage	0201	17.6047	$1,044.72	$329.65	$208.94
59821	T		Treatment of miscarriage	0201	17.6047	$1,044.72	$329.65	$208.94
59830	C		Treat uterus infection					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
59840	T		Abortion	0200	17.8728	$1,060.63	$263.69	$212.13
59841	T		Abortion	0200	17.8728	$1,060.63	$263.69	$212.13
59850	C		Abortion					
59851	C		Abortion					
59852	C		Abortion					
59855	C		Abortion					
59856	C		Abortion					
59857	C		Abortion					
59866	T		Abortion (mpr)	0198	1.3683	$81.20	$32.19	$16.24
59870	T		Evacuate mole of uterus	0201	17.6047	$1,044.72	$329.65	$208.94
59871	T		Remove cerclage suture	0194	20.7525	$1,231.52	$397.84	$246.30
59897	T		Fetal invas px w/ us	0198	1.3683	$81.20	$32.19	$16.24
59898	T		Laparo proc, ob care/deliver	0130	31.9271	$1,894.65	$659.53	$378.93
59899	T		Maternity care procedure	0198	1.3683	$81.20	$32.19	$16.24
60000	T		Drain thyroid/tongue cyst	0252	7.8673	$466.87	$113.41	$93.37
60001	T		Aspirate/inject thyriod cyst	0004	1.7646	$104.72	$22.36	$20.94
60100	T		Biopsy of thyroid	0004	1.7646	$104.72	$22.36	$20.94
60200	T		Remove thyroid lesion	0114	40.7652	$2,419.13	$485.91	$483.83
60210	T		Partial thyroid excision	0114	40.7652	$2,419.13	$485.91	$483.83
60212	T		Partial thyroid excision	0114	40.7652	$2,419.13	$485.91	$483.83
60220	T		Partial removal of thyroid	0114	40.7652	$2,419.13	$485.91	$483.83
60225	T		Partial removal of thyroid	0114	40.7652	$2,419.13	$485.91	$483.83
60240	T		Removal of thyroid	0114	40.7652	$2,419.13	$485.91	$483.83
60252	T		Removal of thyroid	0256	37.3204	$2,214.70		$442.94
60254	C		Extensive thyroid surgery					
60260	T		Repeat thyroid surgery	0256	37.3204	$2,214.70		$442.94
60270	C		Removal of thyroid					
60271	C		Removal of thyroid					
60280	T		Remove thyroid duct lesion	0114	40.7652	$2,419.13	$485.91	$483.83
60281	T		Remove thyroid duct lesion	0114	40.7652	$2,419.13	$485.91	$483.83
60500	T		Explore parathyroid glands	0256	37.3204	$2,214.70		$442.94
60502	C		Re-explore parathyroids					
60505	C		Explore parathyroid glands					
60512	T		Autotransplant parathyroid	0022	19.6472	$1,165.92	$354.45	$233.18
60520	C		Removal of thymus gland					
60521	C		Removal of thymus gland					
60522	C		Removal of thymus gland					
60540	C		Explore adrenal gland					
60545	C		Explore adrenal gland					
60600	C		Remove carotid body lesion					
60605	C		Remove carotid body lesion					
60650	C		Laparoscopy adrenalectomy					
60659	T		Laparo proc, endocrine	0130	31.9271	$1,894.65	$659.53	$378.93
60699	T		Endocrine surgery procedure	0114	40.7652	$2,419.13	$485.91	$483.83
61000	T		Remove cranial cavity fluid	0212	2.974	$176.49	$70.59	$35.30
61001	T		Remove cranial cavity fluid	0212	2.974	$176.49	$70.59	$35.30
61020	T		Remove brain cavity fluid	0212	2.974	$176.49	$70.59	$35.30
61026	T		Injection into brain canal	0212	2.974	$176.49	$70.59	$35.30
61050	T		Remove brain canal fluid	0212	2.974	$176.49	$70.59	$35.30
61055	T		Injection into brain canal	0212	2.974	$176.49	$70.59	$35.30
61070	T		Brain canal shunt procedure	0212	2.974	$176.49	$70.59	$35.30
61105	C		Twist drill hole					
61107	C		Drill skull for implantation					
61108	C		Drill skull for drainage					
61120	C		Burr hole for puncture					
61140	C		Pierce skull for biopsy					
61150	C		Pierce skull for drainage					
61151	C		Pierce skull for drainage					
61154	C		Pierce skull & remove clot					
61156	C		Pierce skull for drainage					
61210	C		Pierce skull, implant device					
61215	T		Insert brain-fluid device	0224	40.6455	$2,412.03		$482.41
61250	C		Pierce skull & explore					
61253	C		Pierce skull & explore					
61304	C		Open skull for exploration					
61305	C		Open skull for exploration					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61312	C		Open skull for drainage					
61313	C		Open skull for drainage					
61314	C		Open skull for drainage					
61315	C		Open skull for drainage					
61316	C		Implt cran bone flap to abdo					
61320	C		Open skull for drainage					
61321	C		Open skull for drainage					
61322	C		Decompressive craniotomy					
61323	C		Decompressive lobectomy					
61330	T		Decompress eye socket	0256	37.3204	$2,214.70		$442.94
61332	C		Explore/biopsy eye socket					
61333	C		Explore orbit/remove lesion					
61334	T		Explore orbit/remove object	0256	37.3204	$2,214.70		$442.94
61340	C		Relieve cranial pressure					
61343	C		Incise skull (press relief)					
61345	C		Relieve cranial pressure					
61440	C		Incise skull for surgery					
61450	C		Incise skull for surgery					
61458	C		Incise skull for brain wound					
61460	C		Incise skull for surgery					
61470	C		Incise skull for surgery					
61480	C		Incise skull for surgery					
61490	C		Incise skull for surgery					
61500	C		Removal of skull lesion					
61501	C		Remove infected skull bone					
61510	C		Removal of brain lesion					
61512	C		Remove brain lining lesion					
61514	C		Removal of brain abscess					
61516	C		Removal of brain lesion					
61517	C		Implt brain chemotx add-on					
61518	C		Removal of brain lesion					
61519	C		Remove brain lining lesion					
61520	C		Removal of brain lesion					
61521	C		Removal of brain lesion					
61522	C		Removal of brain abscess					
61524	C		Removal of brain lesion					
61526	C		Removal of brain lesion					
61530	C		Removal of brain lesion					
61531	C		Implant brain electrodes					
61533	C		Implant brain electrodes					
61534	C		Removal of brain lesion					
61535	C		Remove brain electrodes					
61536	C		Removal of brain lesion					
61537	C		Removal of brain tissue					
61538	C		Removal of brain tissue					
61539	C		Removal of brain tissue					
61540	C		Removal of brain tissue					
61541	C		Incision of brain tissue					
61542	C		Removal of brain tissue					
61543	C		Removal of brain tissue					
61544	C		Remove & treat brain lesion					
61545	C		Excision of brain tumor					
61546	C		Removal of pituitary gland					
61548	C		Removal of pituitary gland					
61550	C		Release of skull seams					
61552	C		Release of skull seams					
61556	C		Incise skull/sutures					
61557	C		Incise skull/sutures					
61558	C		Excision of skull/sutures					
61559	C		Excision of skull/sutures					
61563	C		Excision of skull tumor					
61564	C		Excision of skull tumor					
61566	C		Removal of brain tissue					
61567	C		Incision of brain tissue					
61570	C		Remove foreign body, brain					
61571	C		Incise skull for brain wound					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61575	C		Skull base/brainstem surgery					
61576	C		Skull base/brainstem surgery					
61580	C		Craniofacial approach, skull					
61581	C		Craniofacial approach, skull					
61582	C		Craniofacial approach, skull					
61583	C		Craniofacial approach, skull					
61584	C		Orbitocranial approach/skull					
61585	C		Orbitocranial approach/skull					
61586	C		Resect nasopharynx, skull					
61590	C		Infratemporal approach/skull					
61591	C		Infratemporal approach/skull					
61592	C		Orbitocranial approach/skull					
61595	C		Transtemporal approach/skull					
61596	C		Transcochlear approach/skull					
61597	C		Transcondylar approach/skull					
61598	C		Transpetrosal approach/skull					
61600	C		Resect/excise cranial lesion					
61601	C		Resect/excise cranial lesion					
61605	C		Resect/excise cranial lesion					
61606	C		Resect/excise cranial lesion					
61607	C		Resect/excise cranial lesion					
61608	C		Resect/excise cranial lesion					
61609	C		Transect artery, sinus					
61610	C		Transect artery, sinus					
61611	C		Transect artery, sinus					
61612	C		Transect artery, sinus					
61613	C		Remove aneurysm, sinus					
61615	C		Resect/excise lesion, skull					
61616	C		Resect/excise lesion, skull					
61618	C		Repair dura					
61619	C		Repair dura					
61623	T		Endovasc tempory vessel occl	0081	34.4473	$2,044.21		$408.84
61624	C		Occlusion/embolization cath					
61626	T		Transcath occlusion, non-cns	0081	34.4473	$2,044.21		$408.84
61680	C		Intracranial vessel surgery					
61682	C		Intracranial vessel surgery					
61684	C		Intracranial vessel surgery					
61686	C		Intracranial vessel surgery					
61690	C		Intracranial vessel surgery					
61692	C		Intracranial vessel surgery					
61697	C		Brain aneurysm repr, complx					
61698	C		Brain aneurysm repr, complx					
61700	C		Brain aneurysm repr, simple					
61702	C		Inner skull vessel surgery					
61703	C		Clamp neck artery					
61705	C		Revise circulation to head					
61708	C		Revise circulation to head					
61710	C		Revise circulation to head					
61711	C		Fusion of skull arteries					
61720	C		Incise skull/brain surgery					
61735	C		Incise skull/brain surgery					
61750	C		Incise skull/brain biopsy					
61751	C		Brain biopsy w/ ct/mr guide					
61760	C		Implant brain electrodes					
61770	C		Incise skull for treatment					
61790	T		Treat trigeminal nerve	0220	17.3586	$1,030.11		$206.02
61791	T		Treat trigeminal tract	0206	5.492	$325.91	$75.55	$65.18
61793	E		Focus radiation beam					
61795	S		Brain surgery using computer	0302	4.6145	$273.84	$103.74	$54.77
61850	C		Implant neuroelectrodes					
61860	C		Implant neuroelectrodes					
61863	C		Implant neuroelectrode					
61864	C		Implant neuroelectrde, add'l					
61867	C		Implant neuroelectrode					
61868	C		Implant neuroelectrde, add'l					
61870	C		Implant neuroelectrodes					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61875	C		Implant neuroelectrodes					
61880	T		Revise/remove neuroelectrode	0687	19.2347	$1,141.44	$456.57	$228.29
61885	S		Implant neurostim one array	0039	181.4	$10,764.82		$2,152.96
61886	T		Implant neurostim arrays	0315	290.647	$17,247.86		$3,449.57
61888	T		Revise/remove neuroreceiver	0688	43.0444	$2,554.38	$1,021.75	$510.88
62000	C		Treat skull fracture					
62005	C		Treat skull fracture					
62010	C		Treatment of head injury					
62100	C		Repair brain fluid leakage					
62115	C		Reduction of skull defect					
62116	C		Reduction of skull defect					
62117	C		Reduction of skull defect					
62120	C		Repair skull cavity lesion					
62121	C		Incise skull repair					
62140	C		Repair of skull defect					
62141	C		Repair of skull defect					
62142	C		Remove skull plate/flap					
62143	C		Replace skull plate/flap					
62145	C		Repair of skull & brain					
62146	C		Repair of skull with graft					
62147	C		Repair of skull with graft					
62148	C		Retr bone flap to fix skull					
62160	T		Neuroendoscopy add-on	0122	6.9721	$413.75	$84.85	$82.75
62161	C		Dissect brain w/scope					
62162	C		Remove colloid cyst w/scope					
62163	C		Neuroendoscopy w/fb removal					
62164	C		Remove brain tumor w/scope					
62165	C		Remove pituit tumor w/scope					
62180	C		Establish brain cavity shunt					
62190	C		Establish brain cavity shunt					
62192	C		Establish brain cavity shunt					
62194	T		Replace/irrigate catheter	0427	10.1977	$605.16	$124.11	$121.03
62200	C		Establish brain cavity shunt					
62201	C		Establish brain cavity shunt					
62220	C		Establish brain cavity shunt					
62223	C		Establish brain cavity shunt					
62225	T		Replace/irrigate catheter	0427	10.1977	$605.16	$124.11	$121.03
62230	T		Replace/revise brain shunt	0224	40.6455	$2,412.03		$482.41
62252	S		Csf shunt reprogram	0691	2.5252	$149.85	$59.94	$29.97
62256	C		Remove brain cavity shunt					
62258	C		Replace brain cavity shunt					
62263	T		Lysis epidural adhesions	0203	10.4015	$617.26	$246.90	$123.45
62264	T		Epidural lysis on single day	0203	10.4015	$617.26	$246.90	$123.45
62268	T		Drain spinal cord cyst	0212	2.974	$176.49	$70.59	$35.30
62269	T		Needle biopsy, spinal cord	0685	6.0174	$357.09	$115.47	$71.42
62270	T		Spinal fluid tap, diagnostic	0204	2.191	$130.02	$40.13	$26.00
62272	T		Drain cerebro spinal fluid	0204	2.191	$130.02	$40.13	$26.00
62273	T		Treat epidural spine lesion	0206	5.492	$325.91	$75.55	$65.18
62280	T		Treat spinal cord lesion	0207	6.0109	$356.70	$86.92	$71.34
62281	T		Treat spinal cord lesion	0207	6.0109	$356.70	$86.92	$71.34
62282	T		Treat spinal canal lesion	0207	6.0109	$356.70	$86.92	$71.34
62284	N		Injection for myelogram					
62287	T		Percutaneous diskectomy	0221	29.9209	$1,775.60	$463.62	$355.12
62290	N		Inject for spine disk x-ray					
62291	N		Inject for spine disk x-ray					
62292	T		Injection into disk lesion	0212	2.974	$176.49	$70.59	$35.30
62294	T		Injection into spinal artery	0212	2.974	$176.49	$70.59	$35.30
62310	T		Inject spine c/t	0207	6.0109	$356.70	$86.92	$71.34
62311	T		Inject spine l/s (cd)	0207	6.0109	$356.70	$86.92	$71.34
62318	T		Inject spine w/cath, c/t	0207	6.0109	$356.70	$86.92	$71.34
62319	T		Inject spine w/cath l/s (cd)	0207	6.0109	$356.70	$86.92	$71.34
62350	T		Implant spinal canal cath	0223	28.123	$1,668.90		$333.78
62351	T		Implant spinal canal cath	0208	42.3409	$2,512.64		$502.53
62355	T		Remove spinal canal catheter	0203	10.4015	$617.26	$246.90	$123.45
62360	T		Insert spine infusion device	0226	138.8695	$8,240.93		$1,648.19
62361	T		Implant spine infusion pump	0227	136.4922	$8,099.86		$1,619.97

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
62362	T		Implant spine infusion pump	0227	136.4922	$8,099.86		$1,619.97
62365	T		Remove spine infusion device	0221	29.9209	$1,775.60	$463.62	$355.12
62367	S		Analyze spine infusion pump	0691	2.5252	$149.85	$59.94	$29.97
62368	S		Analyze spine infusion pump	0691	2.5252	$149.85	$59.94	$29.97
63001	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63003	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63005	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63011	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63012	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63015	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63016	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63017	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63020	T		Neck spine disk surgery	0208	42.3409	$2,512.64		$502.53
63030	T		Low back disk surgery	0208	42.3409	$2,512.64		$502.53
63035	T		Spinal disk surgery add-on	0208	42.3409	$2,512.64		$502.53
63040	T		Laminotomy, single cervical	0208	42.3409	$2,512.64		$502.53
63042	T		Laminotomy, single lumbar	0208	42.3409	$2,512.64		$502.53
63043	C		Laminotomy, add'l cervical					
63044	C		Laminotomy, add'l lumbar					
63045	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63046	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63047	T		Removal of spinal lamina	0208	42.3409	$2,512.64		$502.53
63048	T		Remove spinal lamina add-on	0208	42.3409	$2,512.64		$502.53
63050	C		Cervical laminoplasty					
63051	C		C-laminoplasty w/graft/plate					
63055	T		Decompress spinal cord	0208	42.3409	$2,512.64		$502.53
63056	T		Decompress spinal cord	0208	42.3409	$2,512.64		$502.53
63057	T		Decompress spine cord add-on	0208	42.3409	$2,512.64		$502.53
63064	T		Decompress spinal cord	0208	42.3409	$2,512.64		$502.53
63066	T		Decompress spine cord add-on	0208	42.3409	$2,512.64		$502.53
63075	C		Neck spine disk surgery					
63076	C		Neck spine disk surgery					
63077	C		Spine disk surgery, thorax					
63078	C		Spine disk surgery, thorax					
63081	C		Removal of vertebral body					
63082	C		Remove vertebral body add-on					
63085	C		Removal of vertebral body					
63086	C		Remove vertebral body add-on					
63087	C		Removal of vertebral body					
63088	C		Remove vertebral body add-on					
63090	C		Removal of vertebral body					
63091	C		Remove vertebral body add-on					
63101	C		Removal of vertebral body					
63102	C		Removal of vertebral body					
63103	C		Remove vertebral body add-on					
63170	C		Incise spinal cord tract(s)					
63172	C		Drainage of spinal cyst					
63173	C		Drainage of spinal cyst					
63180	C		Revise spinal cord ligaments					
63182	C		Revise spinal cord ligaments					
63185	C		Incise spinal column/nerves					
63190	C		Incise spinal column/nerves					
63191	C		Incise spinal column/nerves					
63194	C		Incise spinal column & cord					
63195	C		Incise spinal column & cord					
63196	C		Incise spinal column & cord					
63197	C		Incise spinal column & cord					
63198	C		Incise spinal column & cord					
63199	C		Incise spinal column & cord					
63200	C		Release of spinal cord					
63250	C		Revise spinal cord vessels					
63251	C		Revise spinal cord vessels					
63252	C		Revise spinal cord vessels					
63265	C		Excise intraspinal lesion					
63266	C		Excise intraspinal lesion					
63267	C		Excise intraspinal lesion					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
63268	C		Excise intraspinal lesion					
63270	C		Excise intraspinal lesion					
63271	C		Excise intraspinal lesion					
63272	C		Excise intraspinal lesion					
63273	C		Excise intraspinal lesion					
63275	C		Biopsy/excise spinal tumor					
63276	C		Biopsy/excise spinal tumor					
63277	C		Biopsy/excise spinal tumor					
63278	C		Biopsy/excise spinal tumor					
63280	C		Biopsy/excise spinal tumor					
63281	C		Biopsy/excise spinal tumor					
63282	C		Biopsy/excise spinal tumor					
63283	C		Biopsy/excise spinal tumor					
63285	C		Biopsy/excise spinal tumor					
63286	C		Biopsy/excise spinal tumor					
63287	C		Biopsy/excise spinal tumor					
63290	C		Biopsy/excise spinal tumor					
63295	C		Repair of laminectomy defect					
63300	C		Removal of vertebral body					
63301	C		Removal of vertebral body					
63302	C		Removal of vertebral body					
63303	C		Removal of vertebral body					
63304	C		Removal of vertebral body					
63305	C		Removal of vertebral body					
63306	C		Removal of vertebral body					
63307	C		Removal of vertebral body					
63308	C		Remove vertebral body add-on					
63600	T		Remove spinal cord lesion	0220	17.3586	$1,030.11		$206.02
63610	T		Stimulation of spinal cord	0220	17.3586	$1,030.11		$206.02
63615	T		Remove lesion of spinal cord	0220	17.3586	$1,030.11		$206.02
63650	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
63655	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
63660	T		Revise/remove neuroelectrode	0687	19.2347	$1,141.44	$456.57	$228.29
63685	T		Implant neuroreceiver	0222	179.0982	$10,628.22		$2,125.64
63688	T		Revise/remove neuroreceiver	0688	43.0444	$2,554.38	$1,021.75	$510.88
63700	C		Repair of spinal herniation					
63702	C		Repair of spinal herniation					
63704	C		Repair of spinal herniation					
63706	C		Repair of spinal herniation					
63707	C		Repair spinal fluid leakage					
63709	C		Repair spinal fluid leakage					
63710	C		Graft repair of spine defect					
63740	C		Install spinal shunt					
63741	T		Install spinal shunt	0228	51.7258	$3,069.56		$613.91
63744	T		Revision of spinal shunt	0228	51.7258	$3,069.56		$613.91
63746	T		Removal of spinal shunt	0109	11.0433	$655.34	$131.49	$131.07
64400	T		N block inj, trigeminal	0204	2.191	$130.02	$40.13	$26.00
64402	T		N block inj, facial	0204	2.191	$130.02	$40.13	$26.00
64405	T		N block inj, occipital	0204	2.191	$130.02	$40.13	$26.00
64408	T		N block inj, vagus	0204	2.191	$130.02	$40.13	$26.00
64410	T		N block inj, phrenic	0206	5.492	$325.91	$75.55	$65.18
64412	T		N block inj, spinal accessor	0206	5.492	$325.91	$75.55	$65.18
64413	T		N block inj, cervical plexus	0204	2.191	$130.02	$40.13	$26.00
64415	T		Injection for nerve block	0204	2.191	$130.02	$40.13	$26.00
64416	T		N block cont infuse, b plex	0204	2.191	$130.02	$40.13	$26.00
64417	T		N block inj, axillary	0204	2.191	$130.02	$40.13	$26.00
64418	T		N block inj, suprascapular	0204	2.191	$130.02	$40.13	$26.00
64420	T		N block inj, intercost, sng	0204	2.191	$130.02	$40.13	$26.00
64421	T		N block inj, intercost, mlt	0206	5.492	$325.91	$75.55	$65.18
64425	T		N block inj ilio-ing/hypogi	0204	2.191	$130.02	$40.13	$26.00
64430	T		N block inj, pudendal	0204	2.191	$130.02	$40.13	$26.00
64435	T		N block inj, paracervical	0204	2.191	$130.02	$40.13	$26.00
64445	T		Injection for nerve block	0204	2.191	$130.02	$40.13	$26.00
64446	T		N blk inj, sciatic, cont inf	0206	5.492	$325.91	$75.55	$65.18
64447	T		N block inj fem, single	0204	2.191	$130.02	$40.13	$26.00
64448	T		N block inj fem, cont inf	0204	2.191	$130.02	$40.13	$26.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
64449	T		N block inj, lumbar plexus	0204	2.191	$130.02	$40.13	$26.00
64450	T		N block, other peripheral	0204	2.191	$130.02	$40.13	$26.00
64470	T		Inj paravertebral c/t	0207	6.0109	$356.70	$86.92	$71.34
64472	T		Inj paravertebral c/t add-on	0206	5.492	$325.91	$75.55	$65.18
64475	T		Inj paravertebral l/s	0207	6.0109	$356.70	$86.92	$71.34
64476	T		Inj paravertebral l/s add-on	0206	5.492	$325.91	$75.55	$65.18
64479	T		Inj foramen epidural c/t	0207	6.0109	$356.70	$86.92	$71.34
64480	T		Inj foramen epidural add-on	0207	6.0109	$356.70	$86.92	$71.34
64483	T		Inj foramen epidural l/s	0207	6.0109	$356.70	$86.92	$71.34
64484	T		Inj foramen epidural add-on	0207	6.0109	$356.70	$86.92	$71.34
64505	T		N block, spenopalatine gangl	0204	2.191	$130.02	$40.13	$26.00
64508	T		N block, carotid sinus s/p	0204	2.191	$130.02	$40.13	$26.00
64510	T		N block, stellate ganglion	0207	6.0109	$356.70	$86.92	$71.34
64517	T		N block inj, hypogas plxs	0204	2.191	$130.02	$40.13	$26.00
64520	T		N block, lumbar/thoracic	0207	6.0109	$356.70	$86.92	$71.34
64530	T		N block inj, celiac pelus	0207	6.0109	$356.70	$86.92	$71.34
64550	A		Apply neurostimulator					
64553	S		Implant neuroelectrodes	0225	234.6925	$13,927.36		$2,785.47
64555	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64560	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64561	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64565	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64573	S		Implant neuroelectrodes	0225	234.6925	$13,927.36		$2,785.47
64575	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64577	S		Implant neuroelectrodes	0225	234.6925	$13,927.36		$2,785.47
64580	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64581	S		Implant neuroelectrodes	0040	55.3297	$3,283.43		$656.69
64585	T		Revise/remove neuroelectrode	0687	19.2347	$1,141.44	$456.57	$228.29
64590	T		Implant neuroreceiver	0222	179.0982	$10,628.22		$2,125.64
64595	T		Revise/remove neuroreceiver	0688	43.0444	$2,554.38	$1,021.75	$510.88
64600	T		Injection treatment of nerve	0203	10.4015	$617.26	$246.90	$123.45
64605	T		Injection treatment of nerve	0203	10.4015	$617.26	$246.90	$123.45
64610	T		Injection treatment of nerve	0203	10.4015	$617.26	$246.90	$123.45
64612	T		Destroy nerve, face muscle	0204	2.191	$130.02	$40.13	$26.00
64613	T		Destroy nerve, spine muscle	0204	2.191	$130.02	$40.13	$26.00
64614	T		Destroy nerve, extrem musc	0204	2.191	$130.02	$40.13	$26.00
64620	T		Injection treatment of nerve	0203	10.4015	$617.26	$246.90	$123.45
64622	T		Destr paravertebrl nerve l/s	0203	10.4015	$617.26	$246.90	$123.45
64623	T		Destr paravertebral n add-on	0207	6.0109	$356.70	$86.92	$71.34
64626	T		Destr paravertebrl nerve c/t	0203	10.4015	$617.26	$246.90	$123.45
64627	T		Destr paravertebral n add-on	0207	6.0109	$356.70	$86.92	$71.34
64630	T		Injection treatment of nerve	0206	5.492	$325.91	$75.55	$65.18
64640	T		Injection treatment of nerve	0206	5.492	$325.91	$75.55	$65.18
64680	T		Injection treatment of nerve	0207	6.0109	$356.70	$86.92	$71.34
64681	T		Injection treatment of nerve	0203	10.4015	$617.26	$246.90	$123.45
64702	T		Revise finger/toe nerve	0220	17.3586	$1,030.11		$206.02
64704	T		Revise hand/foot nerve	0220	17.3586	$1,030.11		$206.02
64708	T		Revise arm/leg nerve	0220	17.3586	$1,030.11		$206.02
64712	T		Revision of sciatic nerve	0220	17.3586	$1,030.11		$206.02
64713	T		Revision of arm nerve(s)	0220	17.3586	$1,030.11		$206.02
64714	T		Revise low back nerve(s)	0220	17.3586	$1,030.11		$206.02
64716	T		Revision of cranial nerve	0220	17.3586	$1,030.11		$206.02
64718	T		Revise ulnar nerve at elbow	0220	17.3586	$1,030.11		$206.02
64719	T		Revise ulnar nerve at wrist	0220	17.3586	$1,030.11		$206.02
64721	T		Carpal tunnel surgery	0220	17.3586	$1,030.11		$206.02
64722	T		Relieve pressure on nerve(s)	0220	17.3586	$1,030.11		$206.02
64726	T		Release foot/toe nerve	0220	17.3586	$1,030.11		$206.02
64727	T		Internal nerve revision	0220	17.3586	$1,030.11		$206.02
64732	T		Incision of brow nerve	0220	17.3586	$1,030.11		$206.02
64734	T		Incision of cheek nerve	0220	17.3586	$1,030.11		$206.02
64736	T		Incision of chin nerve	0220	17.3586	$1,030.11		$206.02
64738	T		Incision of jaw nerve	0220	17.3586	$1,030.11		$206.02
64740	T		Incision of tongue nerve	0220	17.3586	$1,030.11		$206.02
64742	T		Incision of facial nerve	0220	17.3586	$1,030.11		$206.02
64744	T		Incise nerve, back of head	0220	17.3586	$1,030.11		$206.02
64746	T		Incise diaphragm nerve	0220	17.3586	$1,030.11		$206.02

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
64752	C		Incision of vagus nerve					
64755	C		Incision of stomach nerves					
64760	C		Incision of vagus nerve					
64761	T		Incision of pelvis nerve	0220	17.3586	$1,030.11		$206.02
64763	T		Incise hip/thigh nerve	0220	17.3586	$1,030.11		$206.02
64766	T		Incise hip/thigh nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64771	T		Sever cranial nerve	0220	17.3586	$1,030.11		$206.02
64772	T		Incision of spinal nerve	0220	17.3586	$1,030.11		$206.02
64774	T		Remove skin nerve lesion	0220	17.3586	$1,030.11		$206.02
64776	T		Remove digit nerve lesion	0220	17.3586	$1,030.11		$206.02
64778	T		Digit nerve surgery add-on	0220	17.3586	$1,030.11		$206.02
64782	T		Remove limb nerve lesion	0220	17.3586	$1,030.11		$206.02
64783	T		Limb nerve surgery add-on	0220	17.3586	$1,030.11		$206.02
64784	T		Remove nerve lesion	0220	17.3586	$1,030.11		$206.02
64786	T		Remove sciatic nerve lesion	0221	29.9209	$1,775.60	$463.62	$355.12
64787	T		Implant nerve end	0220	17.3586	$1,030.11		$206.02
64788	T		Remove skin nerve lesion	0220	17.3586	$1,030.11		$206.02
64790	T		Removal of nerve lesion	0220	17.3586	$1,030.11		$206.02
64792	T		Removal of nerve lesion	0221	29.9209	$1,775.60	$463.62	$355.12
64795	T		Biopsy of nerve	0220	17.3586	$1,030.11		$206.02
64802	T		Remove sympathetic nerves	0220	17.3586	$1,030.11		$206.02
64804	C		Remove sympathetic nerves					
64809	C		Remove sympathetic nerves					
64818	C		Remove sympathetic nerves					
64820	T		Remove sympathetic nerves	0220	17.3586	$1,030.11		$206.02
64821	T		Remove sympathetic nerves	0054	25.3711	$1,505.60		$301.12
64822	T		Remove sympathetic nerves	0054	25.3711	$1,505.60		$301.12
64823	T		Remove sympathetic nerves	0054	25.3711	$1,505.60		$301.12
64831	T		Repair of digit nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64832	T		Repair nerve add-on	0221	29.9209	$1,775.60	$463.62	$355.12
64834	T		Repair of hand or foot nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64835	T		Repair of hand or foot nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64836	T		Repair of hand or foot nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64837	T		Repair nerve add-on	0221	29.9209	$1,775.60	$463.62	$355.12
64840	T		Repair of leg nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64856	T		Repair/transpose nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64857	T		Repair arm/leg nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64858	T		Repair sciatic nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64859	T		Nerve surgery	0221	29.9209	$1,775.60	$463.62	$355.12
64861	T		Repair of arm nerves	0221	29.9209	$1,775.60	$463.62	$355.12
64862	T		Repair of low back nerves	0221	29.9209	$1,775.60	$463.62	$355.12
64864	T		Repair of facial nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64865	T		Repair of facial nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64866	C		Fusion of facial/other nerve					
64868	C		Fusion of facial/other nerve					
64870	T		Fusion of facial/other nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64872	T		Subsequent repair of nerve	0221	29.9209	$1,775.60	$463.62	$355.12
64874	T		Repair & revise nerve add-on	0221	29.9209	$1,775.60	$463.62	$355.12
64876	T		Repair nerve/shorten bone	0221	29.9209	$1,775.60	$463.62	$355.12
64885	T		Nerve graft, head or neck	0221	29.9209	$1,775.60	$463.62	$355.12
64886	T		Nerve graft, head or neck	0221	29.9209	$1,775.60	$463.62	$355.12
64890	T		Nerve graft, hand or foot	0221	29.9209	$1,775.60	$463.62	$355.12
64891	T		Nerve graft, hand or foot	0221	29.9209	$1,775.60	$463.62	$355.12
64892	T		Nerve graft, arm or leg	0221	29.9209	$1,775.60	$463.62	$355.12
64893	T		Nerve graft, arm or leg	0221	29.9209	$1,775.60	$463.62	$355.12
64895	T		Nerve graft, hand or foot	0221	29.9209	$1,775.60	$463.62	$355.12
64896	T		Nerve graft, hand or foot	0221	29.9209	$1,775.60	$463.62	$355.12
64897	T		Nerve graft, arm or leg	0221	29.9209	$1,775.60	$463.62	$355.12
64898	T		Nerve graft, arm or leg	0221	29.9209	$1,775.60	$463.62	$355.12
64901	T		Nerve graft add-on	0221	29.9209	$1,775.60	$463.62	$355.12
64902	T		Nerve graft add-on	0221	29.9209	$1,775.60	$463.62	$355.12
64905	T		Nerve pedicle transfer	0221	29.9209	$1,775.60	$463.62	$355.12
64907	T		Nerve pedicle transfer	0221	29.9209	$1,775.60	$463.62	$355.12
64999	T		Nervous system surgery	0204	2.191	$130.02	$40.13	$26.00
65091	T		Revise eye	0242	30.5464	$1,812.72	$597.36	$362.54
65093	T		Revise eye with implant	0241	23.3036	$1,382.91	$384.47	$276.58

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
65101	T		Removal of eye	0242	30.5464	$1,812.72	$597.36	$362.54
65103	T		Remove eye/insert implant	0242	30.5464	$1,812.72	$597.36	$362.54
65105	T		Remove eye/attach implant	0242	30.5464	$1,812.72	$597.36	$362.54
65110	T		Removal of eye	0242	30.5464	$1,812.72	$597.36	$362.54
65112	T		Remove eye/revise socket	0242	30.5464	$1,812.72	$597.36	$362.54
65114	T		Remove eye/revise socket	0242	30.5464	$1,812.72	$597.36	$362.54
65125	T		Revise ocular implant	0240	18.1508	$1,077.12	$315.31	$215.42
65130	T		Insert ocular implant	0241	23.3036	$1,382.91	$384.47	$276.58
65135	T		Insert ocular implant	0241	23.3036	$1,382.91	$384.47	$276.58
65140	T		Attach ocular implant	0242	30.5464	$1,812.72	$597.36	$362.54
65150	T		Revise ocular implant	0241	23.3036	$1,382.91	$384.47	$276.58
65155	T		Reinsert ocular implant	0242	30.5464	$1,812.72	$597.36	$362.54
65175	T		Removal of ocular implant	0240	18.1508	$1,077.12	$315.31	$215.42
65205	S		Remove foreign body from eye	0698	1.2438	$73.81	$16.55	$14.76
65210	S		Remove foreign body from eye	0698	1.2438	$73.81	$16.55	$14.76
65220	S		Remove foreign body from eye	0698	1.2438	$73.81	$16.55	$14.76
65222	S		Remove foreign body from eye	0698	1.2438	$73.81	$16.55	$14.76
65235	T		Remove foreign body from eye	0233	14.9673	$888.20	$266.33	$177.64
65260	T		Remove foreign body from eye	0236	17.0229	$1,010.19		$202.04
65265	T		Remove foreign body from eye	0237	28.9401	$1,717.39		$343.48
65270	T		Repair of eye wound	0240	18.1508	$1,077.12	$315.31	$215.42
65272	T		Repair of eye wound	0234	21.9741	$1,304.01	$511.31	$260.80
65273	C		Repair of eye wound					
65275	T		Repair of eye wound	0234	21.9741	$1,304.01	$511.31	$260.80
65280	T		Repair of eye wound	0236	17.0229	$1,010.19		$202.04
65285	T		Repair of eye wound	0672	36.9284	$2,191.44		$438.29
65286	T		Repair of eye wound	0232	6.6732	$396.01	$103.17	$79.20
65290	T		Repair of eye socket wound	0243	22.1671	$1,315.46	$431.39	$263.09
65400	T		Removal of eye lesion	0233	14.9673	$888.20	$266.33	$177.64
65410	T		Biopsy of cornea	0233	14.9673	$888.20	$266.33	$177.64
65420	T		Removal of eye lesion	0233	14.9673	$888.20	$266.33	$177.64
65426	T		Removal of eye lesion	0234	21.9741	$1,304.01	$511.31	$260.80
65430	S		Corneal smear	0698	1.2438	$73.81	$16.55	$14.76
65435	T		Curette/treat cornea	0239	6.9097	$410.04		$82.01
65436	T		Curette/treat cornea	0233	14.9673	$888.20	$266.33	$177.64
65450	S		Treatment of corneal lesion	0231	1.9278	$114.40	$44.61	$22.88
65600	T		Revision of cornea	0240	18.1508	$1,077.12	$315.31	$215.42
65710	T		Corneal transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65730	T		Corneal transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65750	T		Corneal transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65755	T		Corneal transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65760	E		Revision of cornea					
65765	E		Revision of cornea					
65767	E		Corneal tissue transplant					
65770	T		Revise cornea with implant	0244	38.3723	$2,277.13	$803.26	$455.43
65771	E		Radial keratotomy					
65772	T		Correction of astigmatism	0233	14.9673	$888.20	$266.33	$177.64
65775	T		Correction of astigmatism	0233	14.9673	$888.20	$266.33	$177.64
65780	T		Ocular reconst, transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65781	T		Ocular reconst, transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65782	T		Ocular reconst, transplant	0244	38.3723	$2,277.13	$803.26	$455.43
65800	T		Drainage of eye	0233	14.9673	$888.20	$266.33	$177.64
65805	T		Drainage of eye	0233	14.9673	$888.20	$266.33	$177.64
65810	T		Drainage of eye	0234	21.9741	$1,304.01	$511.31	$260.80
65815	T		Drainage of eye	0234	21.9741	$1,304.01	$511.31	$260.80
65820	T		Relieve inner eye pressure	0232	6.6732	$396.01	$103.17	$79.20
65850	T		Incision of eye	0234	21.9741	$1,304.01	$511.31	$260.80
65855	T		Laser surgery of eye	0247	5.033	$298.67	$104.31	$59.73
65860	T		Incise inner eye adhesions	0247	5.033	$298.67	$104.31	$59.73
65865	T		Incise inner eye adhesions	0233	14.9673	$888.20	$266.33	$177.64
65870	T		Incise inner eye adhesions	0234	21.9741	$1,304.01	$511.31	$260.80
65875	T		Incise inner eye adhesions	0234	21.9741	$1,304.01	$511.31	$260.80
65880	T		Incise inner eye adhesions	0233	14.9673	$888.20	$266.33	$177.64
65900	T		Remove eye lesion	0233	14.9673	$888.20	$266.33	$177.64
65920	T		Remove implant of eye	0234	21.9741	$1,304.01	$511.31	$260.80
65930	T		Remove blood clot from eye	0234	21.9741	$1,304.01	$511.31	$260.80

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
66020	T		Injection treatment of eye	0233	14.9673	$888.20	$266.33	$177.64
66030	T		Injection treatment of eye	0232	6.6732	$396.01	$103.17	$79.20
66130	T		Remove eye lesion	0234	21.9741	$1,304.01	$511.31	$260.80
66150	T		Glaucoma surgery	0234	21.9741	$1,304.01	$511.31	$260.80
66155	T		Glaucoma surgery	0234	21.9741	$1,304.01	$511.31	$260.80
66160	T		Glaucoma surgery	0234	21.9741	$1,304.01	$511.31	$260.80
66165	T		Glaucoma surgery	0234	21.9741	$1,304.01	$511.31	$260.80
66170	T		Glaucoma surgery	0234	21.9741	$1,304.01	$511.31	$260.80
66172	T		Incision of eye	0673	29.2582	$1,736.27	$649.56	$347.25
66180	T		Implant eye shunt	0673	29.2582	$1,736.27	$649.56	$347.25
66185	T		Revise eye shunt	0673	29.2582	$1,736.27	$649.56	$347.25
66220	T		Repair eye lesion	0672	36.9284	$2,191.44		$438.29
66225	T		Repair/graft eye lesion	0673	29.2582	$1,736.27	$649.56	$347.25
66250	T		Follow-up surgery of eye	0233	14.9673	$888.20	$266.33	$177.64
66500	T		Incision of iris	0232	6.6732	$396.01	$103.17	$79.20
66505	T		Incision of iris	0232	6.6732	$396.01	$103.17	$79.20
66600	T		Remove iris and lesion	0234	21.9741	$1,304.01	$511.31	$260.80
66605	T		Removal of iris	0234	21.9741	$1,304.01	$511.31	$260.80
66625	T		Removal of iris	0232	6.6732	$396.01	$103.17	$79.20
66630	T		Removal of iris	0234	21.9741	$1,304.01	$511.31	$260.80
66635	T		Removal of iris	0234	21.9741	$1,304.01	$511.31	$260.80
66680	T		Repair iris & ciliary body	0234	21.9741	$1,304.01	$511.31	$260.80
66682	T		Repair iris & ciliary body	0234	21.9741	$1,304.01	$511.31	$260.80
66700	T		Destruction, ciliary body	0233	14.9673	$888.20	$266.33	$177.64
66710	T		Destruction, ciliary body	0233	14.9673	$888.20	$266.33	$177.64
66711	T		Ciliary endoscopic ablation	0233	14.9673	$888.20	$266.33	$177.64
66720	T		Destruction, ciliary body	0233	14.9673	$888.20	$266.33	$177.64
66740	T		Destruction, ciliary body	0234	21.9741	$1,304.01	$511.31	$260.80
66761	T		Revision of iris	0247	5.033	$298.67	$104.31	$59.73
66762	T		Revision of iris	0247	5.033	$298.67	$104.31	$59.73
66770	T		Removal of inner eye lesion	0247	5.033	$298.67	$104.31	$59.73
66820	T		Incision, secondary cataract	0232	6.6732	$396.01	$103.17	$79.20
66821	T		After cataract laser surgery	0247	5.033	$298.67	$104.31	$59.73
66825	T		Reposition intraocular lens	0234	21.9741	$1,304.01	$511.31	$260.80
66830	T		Removal of lens lesion	0232	6.6732	$396.01	$103.17	$79.20
66840	T		Removal of lens material	0245	13.3625	$792.97	$221.89	$158.59
66850	T		Removal of lens material	0249	27.9369	$1,657.86	$524.67	$331.57
66852	T		Removal of lens material	0249	27.9369	$1,657.86	$524.67	$331.57
66920	T		Extraction of lens	0249	27.9369	$1,657.86	$524.67	$331.57
66930	T		Extraction of lens	0249	27.9369	$1,657.86	$524.67	$331.57
66940	T		Extraction of lens	0245	13.3625	$792.97	$221.89	$158.59
66982	T		Cataract surgery, complex	0246	23.4597	$1,392.17	$495.96	$278.43
66983	T		Cataract surg w/iol, 1 stage	0246	23.4597	$1,392.17	$495.96	$278.43
66984	T		Cataract surg w/iol, 1 stage	0246	23.4597	$1,392.17	$495.96	$278.43
66985	T		Insert lens prosthesis	0246	23.4597	$1,392.17	$495.96	$278.43
66986	T		Exchange lens prosthesis	0246	23.4597	$1,392.17	$495.96	$278.43
66990	N		Ophthalmic endoscope add-on					
66999	T		Eye surgery procedure	0232	6.6732	$396.01	$103.17	$79.20
67005	T		Partial removal of eye fluid	0237	28.9401	$1,717.39		$343.48
67010	T		Partial removal of eye fluid	0237	28.9401	$1,717.39		$343.48
67015	T		Release of eye fluid	0237	28.9401	$1,717.39		$343.48
67025	T		Replace eye fluid	0237	28.9401	$1,717.39		$343.48
67027	T		Implant eye drug system	0672	36.9284	$2,191.44		$438.29
67028	T		Injection eye drug	0235	4.6593	$276.50	$67.40	$55.30
67030	T		Incise inner eye strands	0236	17.0229	$1,010.19		$202.04
67031	T		Laser surgery, eye strands	0247	5.033	$298.67	$104.31	$59.73
67036	T		Removal of inner eye fluid	0672	36.9284	$2,191.44		$438.29
67038	T		Strip retinal membrane	0672	36.9284	$2,191.44		$438.29
67039	T		Laser treatment of retina	0672	36.9284	$2,191.44		$438.29
67040	T		Laser treatment of retina	0672	36.9284	$2,191.44		$438.29
67101	T		Repair detached retina	0236	17.0229	$1,010.19		$202.04
67105	T		Repair detached retina	0248	4.6769	$277.54	$93.98	$55.51
67107	T		Repair detached retina	0672	36.9284	$2,191.44		$438.29
67108	T		Repair detached retina	0672	36.9284	$2,191.44		$438.29
67110	T		Repair detached retina	0236	17.0229	$1,010.19		$202.04
67112	T		Rerepair detached retina	0672	36.9284	$2,191.44		$438.29

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
67115	T		Release encircling material	0236	17.0229	$1,010.19		$202.04
67120	T		Remove eye implant material	0236	17.0229	$1,010.19		$202.04
67121	T		Remove eye implant material	0237	28.9401	$1,717.39		$343.48
67141	T		Treatment of retina	0235	4.6593	$276.50	$67.40	$55.30
67145	T		Treatment of retina	0248	4.6769	$277.54	$93.98	$55.51
67208	T		Treatment of retinal lesion	0236	17.0229	$1,010.19		$202.04
67210	T		Treatment of retinal lesion	0248	4.6769	$277.54	$93.98	$55.51
67218	T		Treatment of retinal lesion	0236	17.0229	$1,010.19		$202.04
67220	T		Treatment of choroid lesion	0235	4.6593	$276.50	$67.40	$55.30
67221	T		Ocular photodynamic ther	0235	4.6593	$276.50	$67.40	$55.30
67225	T		Eye photodynamic ther add-on	0235	4.6593	$276.50	$67.40	$55.30
67227	T		Treatment of retinal lesion	0236	17.0229	$1,010.19		$202.04
67228	T		Treatment of retinal lesion	0248	4.6769	$277.54	$93.98	$55.51
67250	T		Reinforce eye wall	0240	18.1508	$1,077.12	$315.31	$215.42
67255	T		Reinforce/graft eye wall	0237	28.9401	$1,717.39		$343.48
67299	T		Eye surgery procedure	0235	4.6593	$276.50	$67.40	$55.30
67311	T		Revise eye muscle	0243	22.1671	$1,315.46	$431.39	$263.09
67312	T		Revise two eye muscles	0243	22.1671	$1,315.46	$431.39	$263.09
67314	T		Revise eye muscle	0243	22.1671	$1,315.46	$431.39	$263.09
67316	T		Revise two eye muscles	0243	22.1671	$1,315.46	$431.39	$263.09
67318	T		Revise eye muscle(s)	0243	22.1671	$1,315.46	$431.39	$263.09
67320	T		Revise eye muscle(s) add-on	0243	22.1671	$1,315.46	$431.39	$263.09
67331	T		Eye surgery follow-up add-on	0243	22.1671	$1,315.46	$431.39	$263.09
67332	T		Rerevise eye muscles add-on	0243	22.1671	$1,315.46	$431.39	$263.09
67334	T		Revise eye muscle w/suture	0243	22.1671	$1,315.46	$431.39	$263.09
67335	T		Eye suture during surgery	0243	22.1671	$1,315.46	$431.39	$263.09
67340	T		Revise eye muscle add-on	0243	22.1671	$1,315.46	$431.39	$263.09
67343	T		Release eye tissue	0243	22.1671	$1,315.46	$431.39	$263.09
67345	T		Destroy nerve of eye muscle	0238	2.5933	$153.89		$30.78
67350	T		Biopsy eye muscle	0699	10.0177	$594.48		$118.90
67399	T		Eye muscle surgery procedure	0243	22.1671	$1,315.46	$431.39	$263.09
67400	T		Explore/biopsy eye socket	0241	23.3036	$1,382.91	$384.47	$276.58
67405	T		Explore/drain eye socket	0241	23.3036	$1,382.91	$384.47	$276.58
67412	T		Explore/treat eye socket	0241	23.3036	$1,382.91	$384.47	$276.58
67413	T		Explore/treat eye socket	0241	23.3036	$1,382.91	$384.47	$276.58
67414	T		Explr/decompress eye socket	0242	30.5464	$1,812.72	$597.36	$362.54
67415	T		Aspiration, orbital contents	0240	18.1508	$1,077.12	$315.31	$215.42
67420	T		Explore/treat eye socket	0242	30.5464	$1,812.72	$597.36	$362.54
67430	T		Explore/treat eye socket	0242	30.5464	$1,812.72	$597.36	$362.54
67440	T		Explore/drain eye socket	0242	30.5464	$1,812.72	$597.36	$362.54
67445	T		Explr/decompress eye socket	0242	30.5464	$1,812.72	$597.36	$362.54
67450	T		Explore/biopsy eye socket	0242	30.5464	$1,812.72	$597.36	$362.54
67500	S		Inject/treat eye socket	0231	1.9278	$114.40	$44.61	$22.88
67505	T		Inject/treat eye socket	0238	2.5933	$153.89		$30.78
67515	T		Inject/treat eye socket	0238	2.5933	$153.89		$30.78
67550	T		Insert eye socket implant	0242	30.5464	$1,812.72	$597.36	$362.54
67560	T		Revise eye socket implant	0241	23.3036	$1,382.91	$384.47	$276.58
67570	T		Decompress optic nerve	0242	30.5464	$1,812.72	$597.36	$362.54
67599	T		Orbit surgery procedure	0238	2.5933	$153.89		$30.78
67700	T		Drainage of eyelid abscess	0238	2.5933	$153.89		$30.78
67710	T		Incision of eyelid	0239	6.9097	$410.04		$82.01
67715	T		Incision of eyelid fold	0240	18.1508	$1,077.12	$315.31	$215.42
67800	T		Remove eyelid lesion	0238	2.5933	$153.89		$30.78
67801	T		Remove eyelid lesions	0239	6.9097	$410.04		$82.01
67805	T		Remove eyelid lesions	0238	2.5933	$153.89		$30.78
67808	T		Remove eyelid lesion(s)	0240	18.1508	$1,077.12	$315.31	$215.42
67810	T		Biopsy of eyelid	0238	2.5933	$153.89		$30.78
67820	S		Revise eyelashes	0698	1.2438	$73.81	$16.55	$14.76
67825	T		Revise eyelashes	0238	2.5933	$153.89		$30.78
67830	T		Revise eyelashes	0239	6.9097	$410.04		$82.01
67835	T		Revise eyelashes	0240	18.1508	$1,077.12	$315.31	$215.42
67840	T		Remove eyelid lesion	0239	6.9097	$410.04		$82.01
67850	T		Treat eyelid lesion	0239	6.9097	$410.04		$82.01
67875	T		Closure of eyelid by suture	0239	6.9097	$410.04		$82.01
67880	T		Revision of eyelid	0233	14.9673	$888.20	$266.33	$177.64
67882	T		Revision of eyelid	0240	18.1508	$1,077.12	$315.31	$215.42

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
67900	T		Repair brow defect	0240	18.1508	$1,077.12	$315.31	$215.42
67901	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67902	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67903	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67904	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67906	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67908	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67909	T		Revise eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67911	T		Revise eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67912	T		Correction eyelid w/ implant	0240	18.1508	$1,077.12	$315.31	$215.42
67914	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67915	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67916	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67917	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67921	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67922	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67923	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67924	T		Repair eyelid defect	0240	18.1508	$1,077.12	$315.31	$215.42
67930	T		Repair eyelid wound	0240	18.1508	$1,077.12	$315.31	$215.42
67935	T		Repair eyelid wound	0240	18.1508	$1,077.12	$315.31	$215.42
67938	S		Remove eyelid foreign body	0698	1.2438	$73.81	$16.55	$14.76
67950	T		Revision of eyelid	0240	18.1508	$1,077.12	$315.31	$215.42
67961	T		Revision of eyelid	0240	18.1508	$1,077.12	$315.31	$215.42
67966	T		Revision of eyelid	0240	18.1508	$1,077.12	$315.31	$215.42
67971	T		Reconstruction of eyelid	0241	23.3036	$1,382.91	$384.47	$276.58
67973	T		Reconstruction of eyelid	0241	23.3036	$1,382.91	$384.47	$276.58
67974	T		Reconstruction of eyelid	0241	23.3036	$1,382.91	$384.47	$276.58
67975	T		Reconstruction of eyelid	0240	18.1508	$1,077.12	$315.31	$215.42
67999	T		Revision of eyelid	0238	2.5933	$153.89		$30.78
68020	T		Incise/drain eyelid lining	0240	18.1508	$1,077.12	$315.31	$215.42
68040	S		Treatment of eyelid lesions	0698	1.2438	$73.81	$16.55	$14.76
68100	T		Biopsy of eyelid lining	0232	6.6732	$396.01	$103.17	$79.20
68110	T		Remove eyelid lining lesion	0699	10.0177	$594.48		$118.90
68115	T		Remove eyelid lining lesion	0240	18.1508	$1,077.12	$315.31	$215.42
68130	T		Remove eyelid lining lesion	0233	14.9673	$888.20	$266.33	$177.64
68135	T		Remove eyelid lining lesion	0239	6.9097	$410.04		$82.01
68200	S		Treat eyelid by injection	0230	0.7858	$46.63	$14.97	$9.33
68320	T		Revise/graft eyelid lining	0240	18.1508	$1,077.12	$315.31	$215.42
68325	T		Revise/graft eyelid lining	0242	30.5464	$1,812.72	$597.36	$362.54
68326	T		Revise/graft eyelid lining	0241	23.3036	$1,382.91	$384.47	$276.58
68328	T		Revise/graft eyelid lining	0241	23.3036	$1,382.91	$384.47	$276.58
68330	T		Revise eyelid lining	0234	21.9741	$1,304.01	$511.31	$260.80
68335	T		Revise/graft eyelid lining	0241	23.3036	$1,382.91	$384.47	$276.58
68340	T		Separate eyelid adhesions	0240	18.1508	$1,077.12	$315.31	$215.42
68360	T		Revise eyelid lining	0234	21.9741	$1,304.01	$511.31	$260.80
68362	T		Revise eyelid lining	0234	21.9741	$1,304.01	$511.31	$260.80
68371	T		Harvest eye tissue, alograft	0233	14.9673	$888.20	$266.33	$177.64
68399	T		Eyelid lining surgery	0238	2.5933	$153.89		$30.78
68400	T		Incise/drain tear gland	0238	2.5933	$153.89		$30.78
68420	T		Incise/drain tear sac	0240	18.1508	$1,077.12	$315.31	$215.42
68440	T		Incise tear duct opening	0238	2.5933	$153.89		$30.78
68500	T		Removal of tear gland	0241	23.3036	$1,382.91	$384.47	$276.58
68505	T		Partial removal, tear gland	0241	23.3036	$1,382.91	$384.47	$276.58
68510	T		Biopsy of tear gland	0240	18.1508	$1,077.12	$315.31	$215.42
68520	T		Removal of tear sac	0241	23.3036	$1,382.91	$384.47	$276.58
68525	T		Biopsy of tear sac	0240	18.1508	$1,077.12	$315.31	$215.42
68530	T		Clearance of tear duct	0240	18.1508	$1,077.12	$315.31	$215.42
68540	T		Remove tear gland lesion	0241	23.3036	$1,382.91	$384.47	$276.58
68550	T		Remove tear gland lesion	0242	30.5464	$1,812.72	$597.36	$362.54
68700	T		Repair tear ducts	0241	23.3036	$1,382.91	$384.47	$276.58
68705	T		Revise tear duct opening	0238	2.5933	$153.89		$30.78
68720	T		Create tear sac drain	0242	30.5464	$1,812.72	$597.36	$362.54
68745	T		Create tear duct drain	0241	23.3036	$1,382.91	$384.47	$276.58
68750	T		Create tear duct drain	0242	30.5464	$1,812.72	$597.36	$362.54
68760	S		Close tear duct opening	0698	1.2438	$73.81	$16.55	$14.76
68761	S		Close tear duct opening	0231	1.9278	$114.40	$44.61	$22.88

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
68770	T		Close tear system fistula	0240	18.1508	$1,077.12	$315.31	$215.42
68801	S		Dilate tear duct opening	0698	1.2438	$73.81	$16.55	$14.76
68810	S		Probe nasolacrimal duct	0231	1.9278	$114.40	$44.61	$22.88
68811	T		Probe nasolacrimal duct	0240	18.1508	$1,077.12	$315.31	$215.42
68815	T		Probe nasolacrimal duct	0240	18.1508	$1,077.12	$315.31	$215.42
68840	S		Explore/irrigate tear ducts	0231	1.9278	$114.40	$44.61	$22.88
68850	N		Injection for tear sac x-ray					
68899	S		Tear duct system surgery	0230	0.7858	$46.63	$14.97	$9.33
69000	T		Drain external ear lesion	0006	1.55	$91.98	$22.28	$18.40
69005	T		Drain external ear lesion	0008	16.4989	$979.09		$195.82
69020	T		Drain outer ear canal lesion	0006	1.55	$91.98	$22.28	$18.40
69090	E		Pierce earlobes					
69100	T		Biopsy of external ear	0019	4.0547	$240.62	$71.87	$48.12
69105	T		Biopsy of external ear canal	0253	16.1357	$957.54	$282.29	$191.51
69110	T		Remove external ear, partial	0021	14.9776	$888.82	$219.48	$177.76
69120	T		Removal of external ear	0254	23.404	$1,388.86	$321.35	$277.77
69140	T		Remove ear canal lesion(s)	0254	23.404	$1,388.86	$321.35	$277.77
69145	T		Remove ear canal lesion(s)	0021	14.9776	$888.82	$219.48	$177.76
69150	T		Extensive ear canal surgery	0252	7.8673	$466.87	$113.41	$93.37
69155	C		Extensive ear/neck surgery					
69200	X		Clear outer ear canal	0340	0.6384	$37.88		$7.58
69205	T		Clear outer ear canal	0022	19.6472	$1,165.92	$354.45	$233.18
69210	X		Remove impacted ear wax	0340	0.6384	$37.88		$7.58
69220	T		Clean out mastoid cavity	0012	0.8497	$50.42	$11.18	$10.08
69222	T		Clean out mastoid cavity	0253	16.1357	$957.54	$282.29	$191.51
69300	T		Revise external ear	0254	23.404	$1,388.86	$321.35	$277.77
69310	T		Rebuild outer ear canal	0256	37.3204	$2,214.70		$442.94
69320	T		Rebuild outer ear canal	0256	37.3204	$2,214.70		$442.94
69399	T		Outer ear surgery procedure	0251	2.0101	$119.29		$23.86
69400	T		Inflate middle ear canal	0251	2.0101	$119.29		$23.86
69401	T		Inflate middle ear canal	0251	2.0101	$119.29		$23.86
69405	T		Catheterize middle ear canal	0252	7.8673	$466.87	$113.41	$93.37
69410	T		Inset middle ear (baffle)	0251	2.0101	$119.29		$23.86
69420	T		Incision of eardrum	0251	2.0101	$119.29		$23.86
69421	T		Incision of eardrum	0253	16.1357	$957.54	$282.29	$191.51
69424	T		Remove ventilating tube	0252	7.8673	$466.87	$113.41	$93.37
69433	T		Create eardrum opening	0252	7.8673	$466.87	$113.41	$93.37
69436	T		Create eardrum opening	0253	16.1357	$957.54	$282.29	$191.51
69440	T		Exploration of middle ear	0254	23.404	$1,388.86	$321.35	$277.77
69450	T		Eardrum revision	0256	37.3204	$2,214.70		$442.94
69501	T		Mastoidectomy	0256	37.3204	$2,214.70		$442.94
69502	T		Mastoidectomy	0254	23.404	$1,388.86	$321.35	$277.77
69505	T		Remove mastoid structures	0256	37.3204	$2,214.70		$442.94
69511	T		Extensive mastoid surgery	0256	37.3204	$2,214.70		$442.94
69530	T		Extensive mastoid surgery	0256	37.3204	$2,214.70		$442.94
69535	C		Remove part of temporal bone					
69540	T		Remove ear lesion	0253	16.1357	$957.54	$282.29	$191.51
69550	T		Remove ear lesion	0256	37.3204	$2,214.70		$442.94
69552	T		Remove ear lesion	0256	37.3204	$2,214.70		$442.94
69554	C		Remove ear lesion					
69601	T		Mastoid surgery revision	0256	37.3204	$2,214.70		$442.94
69602	T		Mastoid surgery revision	0256	37.3204	$2,214.70		$442.94
69603	T		Mastoid surgery revision	0256	37.3204	$2,214.70		$442.94
69604	T		Mastoid surgery revision	0256	37.3204	$2,214.70		$442.94
69605	T		Mastoid surgery revision	0256	37.3204	$2,214.70		$442.94
69610	T		Repair of eardrum	0254	23.404	$1,388.86	$321.35	$277.77
69620	T		Repair of eardrum	0254	23.404	$1,388.86	$321.35	$277.77
69631	T		Repair eardrum structures	0256	37.3204	$2,214.70		$442.94
69632	T		Rebuild eardrum structures	0256	37.3204	$2,214.70		$442.94
69633	T		Rebuild eardrum structures	0256	37.3204	$2,214.70		$442.94
69635	T		Repair eardrum structures	0256	37.3204	$2,214.70		$442.94
69636	T		Rebuild eardrum structures	0256	37.3204	$2,214.70		$442.94
69637	T		Rebuild eardrum structures	0256	37.3204	$2,214.70		$442.94
69641	T		Revise middle ear & mastoid	0256	37.3204	$2,214.70		$442.94
69642	T		Revise middle ear & mastoid	0256	37.3204	$2,214.70		$442.94
69643	T		Revise middle ear & mastoid	0256	37.3204	$2,214.70		$442.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
69644	T		Revise middle ear & mastoid	0256	37.3204	$2,214.70		$442.94
69645	T		Revise middle ear & mastoid	0256	37.3204	$2,214.70		$442.94
69646	T		Revise middle ear & mastoid	0256	37.3204	$2,214.70		$442.94
69650	T		Release middle ear bone	0254	23.404	$1,388.86	$321.35	$277.77
69660	T		Revise middle ear bone	0256	37.3204	$2,214.70		$442.94
69661	T		Revise middle ear bone	0256	37.3204	$2,214.70		$442.94
69662	T		Revise middle ear bone	0256	37.3204	$2,214.70		$442.94
69666	T		Repair middle ear structures	0256	37.3204	$2,214.70		$442.94
69667	T		Repair middle ear structures	0256	37.3204	$2,214.70		$442.94
69670	T		Remove mastoid air cells	0256	37.3204	$2,214.70		$442.94
69676	T		Remove middle ear nerve	0256	37.3204	$2,214.70		$442.94
69700	T		Close mastoid fistula	0256	37.3204	$2,214.70		$442.94
69710	E		Implant/replace hearing aid					
69711	T		Remove/repair hearing aid	0256	37.3204	$2,214.70		$442.94
69714	T		Implant temple bone w/stimul	0256	37.3204	$2,214.70		$442.94
69715	T		Temple bne implnt w/stimulat	0256	37.3204	$2,214.70		$442.94
69717	T		Temple bone implant revision	0256	37.3204	$2,214.70		$442.94
69718	T		Revise temple bone implant	0256	37.3204	$2,214.70		$442.94
69720	T		Release facial nerve	0256	37.3204	$2,214.70		$442.94
69725	T		Release facial nerve	0256	37.3204	$2,214.70		$442.94
69740	T		Repair facial nerve	0256	37.3204	$2,214.70		$442.94
69745	T		Repair facial nerve	0256	37.3204	$2,214.70		$442.94
69799	T		Middle ear surgery procedure	0251	2.0101	$119.29		$23.86
69801	T		Incise inner ear	0256	37.3204	$2,214.70		$442.94
69802	T		Incise inner ear	0256	37.3204	$2,214.70		$442.94
69805	T		Explore inner ear	0256	37.3204	$2,214.70		$442.94
69806	T		Explore inner ear	0256	37.3204	$2,214.70		$442.94
69820	T		Establish inner ear window	0256	37.3204	$2,214.70		$442.94
69840	T		Revise inner ear window	0256	37.3204	$2,214.70		$442.94
69905	T		Remove inner ear	0256	37.3204	$2,214.70		$442.94
69910	T		Remove inner ear & mastoid	0256	37.3204	$2,214.70		$442.94
69915	T		Incise inner ear nerve	0256	37.3204	$2,214.70		$442.94
69930	T		Implant cochlear device	0259	366.3317	$21,739.22	$8,070.21	$4,347.84
69949	T		Inner ear surgery procedure	0251	2.0101	$119.29		$23.86
69950	C		Incise inner ear nerve					
69955	T		Release facial nerve	0256	37.3204	$2,214.70		$442.94
69960	T		Release inner ear canal	0256	37.3204	$2,214.70		$442.94
69970	C		Remove inner ear lesion					
69979	T		Temporal bone surgery	0251	2.0101	$119.29		$23.86
69990	N		Microsurgery add-on					
70010	S		Contrast x-ray of brain	0274	3.0413	$180.48	$72.19	$36.10
70015	S		Contrast x-ray of brain	0274	3.0413	$180.48	$72.19	$36.10
70030	X		X-ray eye for foreign body	0260	0.7555	$44.83	$17.93	$8.97
70100	X		X-ray exam of jaw	0260	0.7555	$44.83	$17.93	$8.97
70110	X		X-ray exam of jaw	0260	0.7555	$44.83	$17.93	$8.97
70120	X		X-ray exam of mastoids	0260	0.7555	$44.83	$17.93	$8.97
70130	X		X-ray exam of mastoids	0260	0.7555	$44.83	$17.93	$8.97
70134	X		X-ray exam of middle ear	0261	1.2901	$76.56		$15.31
70140	X		X-ray exam of facial bones	0260	0.7555	$44.83	$17.93	$8.97
70150	X		X-ray exam of facial bones	0260	0.7555	$44.83	$17.93	$8.97
70160	X		X-ray exam of nasal bones	0260	0.7555	$44.83	$17.93	$8.97
70170	X		X-ray exam of tear duct	0264	3.524	$209.12	$79.41	$41.82
70190	X		X-ray exam of eye sockets	0260	0.7555	$44.83	$17.93	$8.97
70200	X		X-ray exam of eye sockets	0260	0.7555	$44.83	$17.93	$8.97
70210	X		X-ray exam of sinuses	0260	0.7555	$44.83	$17.93	$8.97
70220	X		X-ray exam of sinuses	0260	0.7555	$44.83	$17.93	$8.97
70240	X		X-ray exam, pituitary saddle	0260	0.7555	$44.83	$17.93	$8.97
70250	X		X-ray exam of skull	0260	0.7555	$44.83	$17.93	$8.97
70260	X		X-ray exam of skull	0261	1.2901	$76.56		$15.31
70300	X		X-ray exam of teeth	0262	0.9228	$54.76		$10.95
70310	X		X-ray exam of teeth	0262	0.9228	$54.76		$10.95
70320	X		Full mouth x-ray of teeth	0262	0.9228	$54.76		$10.95
70328	X		X-ray exam of jaw joint	0260	0.7555	$44.83	$17.93	$8.97
70330	X		X-ray exam of jaw joints	0260	0.7555	$44.83	$17.93	$8.97
70332	S		X-ray exam of jaw joint	0275	3.5779	$212.32	$69.09	$42.46
70336	S		Magnetic image, jaw joint	0335	5.1581	$306.10	$122.43	$61.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
70350	X		X-ray head for orthodontia	0260	0.7555	$44.83	$17.93	$8.97
70355	X		Panoramic x-ray of jaws	0260	0.7555	$44.83	$17.93	$8.97
70360	X		X-ray exam of neck	0260	0.7555	$44.83	$17.93	$8.97
70370	X		Throat x-ray & fluoroscopy	0272	1.3801	$81.90	$32.76	$16.38
70371	X		Speech evaluation, complex	0272	1.3801	$81.90	$32.76	$16.38
70373	X		Contrast x-ray of larynx	0263	1.7476	$103.71	$24.40	$20.74
70380	X		X-ray exam of salivary gland	0260	0.7555	$44.83	$17.93	$8.97
70390	X		X-ray exam of salivary duct	0263	1.7476	$103.71	$24.40	$20.74
70450*	S		Ct head/brain w/o dye	0332	3.2694	$194.02	$77.60	$38.80
70460*	S		Ct head/brain w/dye	0283	4.4253	$262.61	$105.04	$52.52
70470*	S		Ct head/brain w/o & w/ dye	0333	5.2836	$313.54	$125.41	$62.71
70480*	S		Ct orbit/ear/fossa w/o dye	0332	3.2694	$194.02	$77.60	$38.80
70481*	S		Ct orbit/ear/fossa w/dye	0283	4.4253	$262.61	$105.04	$52.52
70482*	S		Ct orbit/ear/fossa w/o&w dye	0333	5.2836	$313.54	$125.41	$62.71
70486*	S		Ct maxillofacial w/o dye	0332	3.2694	$194.02	$77.60	$38.80
70487*	S		Ct maxillofacial w/dye	0283	4.4253	$262.61	$105.04	$52.52
70488*	S		Ct maxillofacial w/o & w dye	0333	5.2836	$313.54	$125.41	$62.71
70490*	S		Ct soft tissue neck w/o dye	0332	3.2694	$194.02	$77.60	$38.80
70491*	S		Ct soft tissue neck w/dye	0283	4.4253	$262.61	$105.04	$52.52
70492*	S		Ct sft tsue nck w/o & w/dye	0333	5.2836	$313.54	$125.41	$62.71
70496*	S		Ct angiography, head	0662	5.1621	$306.33	$122.53	$61.27
70498*	S		Ct angiography, neck	0662	5.1621	$306.33	$122.53	$61.27
70540*	S		Mri orbit/face/neck w/o dye	0336	6.0742	$360.46	$144.18	$72.09
70542*	S		Mri orbit/face/neck w/dye	0284	6.4201	$380.99	$152.39	$76.20
70543*	S		Mri orbt/fac/nck w/o & w dye	0337	8.7945	$521.89	$208.75	$104.38
70544*	S		Mr angiography head w/o dye	0336	6.0742	$360.46	$144.18	$72.09
70545*	S		Mr angiography head w/dye	0284	6.4201	$380.99	$152.39	$76.20
70546*	S		Mr angiograph head w/o&w dye	0337	8.7945	$521.89	$208.75	$104.38
70547*	S		Mr angiography neck w/o dye	0336	6.0742	$360.46	$144.18	$72.09
70548*	S		Mr angiography neck w/dye	0284	6.4201	$380.99	$152.39	$76.20
70549*	S		Mr angiograph neck w/o&w dye	0337	8.7945	$521.89	$208.75	$104.38
70551*	S		Mri brain w/o dye	0336	6.0742	$360.46	$144.18	$72.09
70552*	S		Mri brain w/ dye	0284	6.4201	$380.99	$152.39	$76.20
70553*	S		Mri brain w/o & w/ dye	0337	8.7945	$521.89	$208.75	$104.38
70557	S		Mri brain w/o dye	0336	6.0742	$360.46	$144.18	$72.09
70558	S		Mri brain w/ dye	0284	6.4201	$380.99	$152.39	$76.20
70559	S		Mri brain w/o & w/ dye	0337	8.7945	$521.89	$208.75	$104.38
71010	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71015	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71020	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71021	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71022	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71023	X		Chest x-ray and fluoroscopy	0272	1.3801	$81.90	$32.76	$16.38
71030	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71034	X		Chest x-ray and fluoroscopy	0272	1.3801	$81.90	$32.76	$16.38
71035	X		Chest x-ray	0260	0.7555	$44.83	$17.93	$8.97
71040	X		Contrast x-ray of bronchi	0263	1.7476	$103.71	$24.40	$20.74
71060	X		Contrast x-ray of bronchi	0263	1.7476	$103.71	$24.40	$20.74
71090	X		X-ray & pacemaker insertion	0272	1.3801	$81.90	$32.76	$16.38
71100	X		X-ray exam of ribs	0260	0.7555	$44.83	$17.93	$8.97
71101	X		X-ray exam of ribs/chest	0260	0.7555	$44.83	$17.93	$8.97
71110	X		X-ray exam of ribs	0260	0.7555	$44.83	$17.93	$8.97
71111	X		X-ray exam of ribs/ chest	0261	1.2901	$76.56		$15.31
71120	X		X-ray exam of breastbone	0260	0.7555	$44.83	$17.93	$8.97
71130	X		X-ray exam of breastbone	0260	0.7555	$44.83	$17.93	$8.97
71250*	S		Ct thorax w/o dye	0332	3.2694	$194.02	$77.60	$38.80
71260*	S		Ct thorax w/dye	0283	4.4253	$262.61	$105.04	$52.52
71270*	S		Ct thorax w/o & w/ dye	0333	5.2836	$313.54	$125.41	$62.71
71275*	S		Ct angiography, chest	0662	5.1621	$306.33	$122.53	$61.27
71550*	S		Mri chest w/o dye	0336	6.0742	$360.46	$144.18	$72.09
71551*	S		Mri chest w/dye	0284	6.4201	$380.99	$152.39	$76.20
71552*	S		Mri chest w/o & w/dye	0337	8.7945	$521.89	$208.75	$104.38
71555	B		Mri angio chest w or w/o dye					
72010	X		X-ray exam of spine	0260	0.7555	$44.83	$17.93	$8.97
72020	X		X-ray exam of spine	0260	0.7555	$44.83	$17.93	$8.97
72040	X		X-ray exam of neck spine	0260	0.7555	$44.83	$17.93	$8.97

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
72050	X		X-ray exam of neck spine	0261	1.2901	$76.56		$15.31
72052	X		X-ray exam of neck spine	0261	1.2901	$76.56		$15.31
72069	X		X-ray exam of trunk spine	0260	0.7555	$44.83	$17.93	$8.97
72070	X		X-ray exam of thoracic spine	0260	0.7555	$44.83	$17.93	$8.97
72072	X		X-ray exam of thoracic spine	0260	0.7555	$44.83	$17.93	$8.97
72074	X		X-ray exam of thoracic spine	0260	0.7555	$44.83	$17.93	$8.97
72080	X		X-ray exam of trunk spine	0260	0.7555	$44.83	$17.93	$8.97
72090	X		X-ray exam of trunk spine	0261	1.2901	$76.56		$15.31
72100	X		X-ray exam of lower spine	0260	0.7555	$44.83	$17.93	$8.97
72110	X		X-ray exam of lower spine	0261	1.2901	$76.56		$15.31
72114	X		X-ray exam of lower spine	0261	1.2901	$76.56		$15.31
72120	X		X-ray exam of lower spine	0261	1.2901	$76.56		$15.31
72125*	S		Ct neck spine w/o dye	0332	3.2694	$194.02	$77.60	$38.80
72126*	S		Ct neck spine w/dye	0283	4.4253	$262.61	$105.04	$52.52
72127*	S		Ct neck spine w/o & w/dye	0333	5.2836	$313.54	$125.41	$62.71
72128*	S		Ct chest spine w/o dye	0332	3.2694	$194.02	$77.60	$38.80
72129*	S		Ct chest spine w/dye	0283	4.4253	$262.61	$105.04	$52.52
72130*	S		Ct chest spine w/o & w/dye	0333	5.2836	$313.54	$125.41	$62.71
72131*	S		Ct lumbar spine w/o dye	0332	3.2694	$194.02	$77.60	$38.80
72132*	S		Ct lumbar spine w/dye	0283	4.4253	$262.61	$105.04	$52.52
72133*	S		Ct lumbar spine w/o & w/dye	0333	5.2836	$313.54	$125.41	$62.71
72141*	S		Mri neck spine w/o dye	0336	6.0742	$360.46	$144.18	$72.09
72142*	S		Mri neck spine w/dye	0284	6.4201	$380.99	$152.39	$76.20
72146*	S		Mri chest spine w/o dye	0336	6.0742	$360.46	$144.18	$72.09
72147*	S		Mri chest spine w/dye	0284	6.4201	$380.99	$152.39	$76.20
72148*	S		Mri lumbar spine w/o dye	0336	6.0742	$360.46	$144.18	$72.09
72149*	S		Mri lumbar spine w/dye	0284	6.4201	$380.99	$152.39	$76.20
72156*	S		Mri neck spine w/o & w/dye	0337	8.7945	$521.89	$208.75	$104.38
72157*	S		Mri chest spine w/o & w/dye	0337	8.7945	$521.89	$208.75	$104.38
72158*	S		Mri lumbar spine w/o & w/dye	0337	8.7945	$521.89	$208.75	$104.38
72159	E		Mr angio spine w/o&w/dye					
72170	X		X-ray exam of pelvis	0260	0.7555	$44.83	$17.93	$8.97
72190	X		X-ray exam of pelvis	0260	0.7555	$44.83	$17.93	$8.97
72191*	S		Ct angiograph pelv w/o&w/dye	0662	5.1621	$306.33	$122.53	$61.27
72192*	S		Ct pelvis w/o dye	0332	3.2694	$194.02	$77.60	$38.80
72193*	S		Ct pelvis w/dye	0283	4.4253	$262.61	$105.04	$52.52
72194*	S		Ct pelvis w/o & w/dye	0333	5.2836	$313.54	$125.41	$62.71
72195*	S		Mri pelvis w/o dye	0336	6.0742	$360.46	$144.18	$72.09
72196*	S		Mri pelvis w/dye	0284	6.4201	$380.99	$152.39	$76.20
72197*	S		Mri pelvis w/o & w/dye	0337	8.7945	$521.89	$208.75	$104.38
72198	B		Mr angio pelvis w/o & w/dye					
72200	X		X-ray exam sacroiliac joints	0260	0.7555	$44.83	$17.93	$8.97
72202	X		X-ray exam sacroiliac joints	0260	0.7555	$44.83	$17.93	$8.97
72220	X		X-ray exam of tailbone	0260	0.7555	$44.83	$17.93	$8.97
72240	S		Contrast x-ray of neck spine	0274	3.0413	$180.48	$72.19	$36.10
72255	S		Contrast x-ray, thorax spine	0274	3.0413	$180.48	$72.19	$36.10
72265	S		Contrast x-ray, lower spine	0274	3.0413	$180.48	$72.19	$36.10
72270	S		Contrast x-ray, spine	0274	3.0413	$180.48	$72.19	$36.10
72275	S		Epidurography	0274	3.0413	$180.48	$72.19	$36.10
72285	S		X-ray c/t spine disk	0388	12.3294	$731.66	$292.66	$146.33
72295	S		X-ray of lower spine disk	0388	12.3294	$731.66	$292.66	$146.33
73000	X		X-ray exam of collar bone	0260	0.7555	$44.83	$17.93	$8.97
73010	X		X-ray exam of shoulder blade	0260	0.7555	$44.83	$17.93	$8.97
73020	X		X-ray exam of shoulder	0260	0.7555	$44.83	$17.93	$8.97
73030	X		X-ray exam of shoulder	0260	0.7555	$44.83	$17.93	$8.97
73040	S		Contrast x-ray of shoulder	0275	3.5779	$212.32	$69.09	$42.46
73050	X		X-ray exam of shoulders	0260	0.7555	$44.83	$17.93	$8.97
73060	X		X-ray exam of humerus	0260	0.7555	$44.83	$17.93	$8.97
73070	X		X-ray exam of elbow	0260	0.7555	$44.83	$17.93	$8.97
73080	X		X-ray exam of elbow	0260	0.7555	$44.83	$17.93	$8.97
73085	S		Contrast x-ray of elbow	0275	3.5779	$212.32	$69.09	$42.46
73090	X		X-ray exam of forearm	0260	0.7555	$44.83	$17.93	$8.97
73092	X		X-ray exam of arm, infant	0260	0.7555	$44.83	$17.93	$8.97
73100	X		X-ray exam of wrist	0260	0.7555	$44.83	$17.93	$8.97
73110	X		X-ray exam of wrist	0260	0.7555	$44.83	$17.93	$8.97
73115	S		Contrast x-ray of wrist	0275	3.5779	$212.32	$69.09	$42.46

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
73120	X		X-ray exam of hand	0260	0.7555	$44.83	$17.93	$8.97
73130	X		X-ray exam of hand	0260	0.7555	$44.83	$17.93	$8.97
73140	X		X-ray exam of finger(s)	0260	0.7555	$44.83	$17.93	$8.97
73200*	S		Ct upper extremity w/o dye	0332	3.2694	$194.02	$77.60	$38.80
73201*	S		Ct upper extremity w/dye	0283	4.4253	$262.61	$105.04	$52.52
73202*	S		Ct uppr extremity w/o&w/dye	0333	5.2836	$313.54	$125.41	$62.71
73206*	S		Ct angio upr extrm w/o&w/dye	0662	5.1621	$306.33	$122.53	$61.27
73218*	S		Mri upper extremity w/o dye	0336	6.0742	$360.46	$144.18	$72.09
73219*	S		Mri upper extremity w/dye	0284	6.4201	$380.99	$152.39	$76.20
73220*	S		Mri uppr extremity w/o&w/dye	0337	8.7945	$521.89	$208.75	$104.38
73221*	S		Mri joint upr extrem w/o dye	0336	6.0742	$360.46	$144.18	$72.09
73222*	S		Mri joint upr extrem w/dye	0284	6.4201	$380.99	$152.39	$76.20
73223*	S		Mri joint upr extr w/o&w/dye	0337	8.7945	$521.89	$208.75	$104.38
73225	E		Mr angio upr extr w/o&w/dye					
73500	X		X-ray exam of hip	0260	0.7555	$44.83	$17.93	$8.97
73510	X		X-ray exam of hip	0260	0.7555	$44.83	$17.93	$8.97
73520	X		X-ray exam of hips	0261	1.2901	$76.56		$15.31
73525	S		Contrast x-ray of hip	0275	3.5779	$212.32	$69.09	$42.46
73530	X		X-ray exam of hip	0261	1.2901	$76.56		$15.31
73540	X		X-ray exam of pelvis & hips	0260	0.7555	$44.83	$17.93	$8.97
73542	S		X-ray exam, sacroiliac joint	0275	3.5779	$212.32	$69.09	$42.46
73550	X		X-ray exam of thigh	0260	0.7555	$44.83	$17.93	$8.97
73560	X		X-ray exam of knee, 1 or 2	0260	0.7555	$44.83	$17.93	$8.97
73562	X		X-ray exam of knee, 3	0260	0.7555	$44.83	$17.93	$8.97
73564	X		X-ray exam, knee, 4 or more	0260	0.7555	$44.83	$17.93	$8.97
73565	X		X-ray exam of knees	0260	0.7555	$44.83	$17.93	$8.97
73580	S		Contrast x-ray of knee joint	0275	3.5779	$212.32	$69.09	$42.46
73590	X		X-ray exam of lower leg	0260	0.7555	$44.83	$17.93	$8.97
73592	X		X-ray exam of leg, infant	0260	0.7555	$44.83	$17.93	$8.97
73600	X		X-ray exam of ankle	0260	0.7555	$44.83	$17.93	$8.97
73610	X		X-ray exam of ankle	0260	0.7555	$44.83	$17.93	$8.97
73615	S		Contrast x-ray of ankle	0275	3.5779	$212.32	$69.09	$42.46
73620	X		X-ray exam of foot	0260	0.7555	$44.83	$17.93	$8.97
73630	X		X-ray exam of foot	0260	0.7555	$44.83	$17.93	$8.97
73650	X		X-ray exam of heel	0260	0.7555	$44.83	$17.93	$8.97
73660	X		X-ray exam of toe(s)	0260	0.7555	$44.83	$17.93	$8.97
73700*	S		Ct lower extremity w/o dye	0332	3.2694	$194.02	$77.60	$38.80
73701*	S		Ct lower extremity w/dye	0283	4.4253	$262.61	$105.04	$52.52
73702*	S		Ct lwr extremity w/o&w/dye	0333	5.2836	$313.54	$125.41	$62.71
73706*	S		Ct angio lwr extr w/o&w/dye	0662	5.1621	$306.33	$122.53	$61.27
73718*	S		Mri lower extremity w/o dye	0336	6.0742	$360.46	$144.18	$72.09
73719*	S		Mri lower extremity w/dye	0284	6.4201	$380.99	$152.39	$76.20
73720*	S		Mri lwr extremity w/o&w/dye	0337	8.7945	$521.89	$208.75	$104.38
73721*	S		Mri jnt of lwr extre w/o dye	0336	6.0742	$360.46	$144.18	$72.09
73722*	S		Mri joint of lwr extr w/dye	0284	6.4201	$380.99	$152.39	$76.20
73723*	S		Mri joint lwr extr w/o&w/dye	0337	8.7945	$521.89	$208.75	$104.38
73725	B		Mr ang lwr ext w or w/o dye					
74000	X		X-ray exam of abdomen	0260	0.7555	$44.83	$17.93	$8.97
74010	X		X-ray exam of abdomen	0260	0.7555	$44.83	$17.93	$8.97
74020	X		X-ray exam of abdomen	0260	0.7555	$44.83	$17.93	$8.97
74022	X		X-ray exam series, abdomen	0261	1.2901	$76.56		$15.31
74150*	S		Ct abdomen w/o dye	0332	3.2694	$194.02	$77.60	$38.80
74160*	S		Ct abdomen w/dye	0283	4.4253	$262.61	$105.04	$52.52
74170*	S		Ct abdomen w/o &w /dye	0333	5.2836	$313.54	$125.41	$62.71
74175*	S		Ct angio abdom w/o & w/dye	0662	5.1621	$306.33	$122.53	$61.27
74181*	S		Mri abdomen w/o dye	0336	6.0742	$360.46	$144.18	$72.09
74182*	S		Mri abdomen w/dye	0284	6.4201	$380.99	$152.39	$76.20
74183*	S		Mri abdomen w/o & w/dye	0337	8.7945	$521.89	$208.75	$104.38
74185	B		Mri angio, abdom w orw/o dye					
74190	X		X-ray exam of peritoneum	0264	3.524	$209.12	$79.41	$41.82
74210	S		Contrst x-ray exam of throat	0276	1.5319	$90.91	$36.36	$18.18
74220	S		Contrast x-ray, esophagus	0276	1.5319	$90.91	$36.36	$18.18
74230	S		Cine/vid x-ray, throat/esoph	0276	1.5319	$90.91	$36.36	$18.18
74235	S		Remove esophagus obstruction	0296	2.2452	$133.24	$53.29	$26.65
74240	S		X-ray exam, upper gi tract	0276	1.5319	$90.91	$36.36	$18.18
74241	S		X-ray exam, upper gi tract	0276	1.5319	$90.91	$36.36	$18.18

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
74245	S		X-ray exam, upper gi tract	0277	2.3852	$141.54	$56.61	$28.31
74246	S		Contrst x-ray uppr gi tract	0276	1.5319	$90.91	$36.36	$18.18
74247	S		Contrst x-ray uppr gi tract	0276	1.5319	$90.91	$36.36	$18.18
74249	S		Contrst x-ray uppr gi tract	0277	2.3852	$141.54	$56.61	$28.31
74250	S		X-ray exam of small bowel	0276	1.5319	$90.91	$36.36	$18.18
74251	S		X-ray exam of small bowel	0277	2.3852	$141.54	$56.61	$28.31
74260	S		X-ray exam of small bowel	0277	2.3852	$141.54	$56.61	$28.31
74270	S		Contrast x-ray exam of colon	0276	1.5319	$90.91	$36.36	$18.18
74280	S		Contrast x-ray exam of colon	0277	2.3852	$141.54	$56.61	$28.31
74283	S		Contrast x-ray exam of colon	0276	1.5319	$90.91	$36.36	$18.18
74290	S		Contrast x-ray, gallbladder	0276	1.5319	$90.91	$36.36	$18.18
74291	S		Contrast x-rays, gallbladder	0276	1.5319	$90.91	$36.36	$18.18
74300	X		X-ray bile ducts/pancreas	0263	1.7476	$103.71	$24.40	$20.74
74301	X		X-rays at surgery add-on	0263	1.7476	$103.71	$24.40	$20.74
74305	X		X-ray bile ducts/pancreas	0263	1.7476	$103.71	$24.40	$20.74
74320	X		Contrast x-ray of bile ducts	0264	3.524	$209.12	$79.41	$41.82
74327	S		X-ray bile stone removal	0296	2.2452	$133.24	$53.29	$26.65
74328	N		X-ray bile duct endoscopy					
74329	N		X-ray for pancreas endoscopy					
74330	N		X-ray bile/panc endoscopy					
74340	X		X-ray guide for GI tube	0272	1.3801	$81.90	$32.76	$16.38
74350	X		X-ray guide, stomach tube	0263	1.7476	$103.71	$24.40	$20.74
74355	X		X-ray guide, intestinal tube	0263	1.7476	$103.71	$24.40	$20.74
74360	S		X-ray guide, GI dilation	0296	2.2452	$133.24	$53.29	$26.65
74363	S		X-ray, bile duct dilation	0297	5.253	$311.73	$122.13	$62.35
74400	S		Contrst x-ray, urinary tract	0278	2.6434	$156.87	$62.74	$31.37
74410	S		Contrst x-ray, urinary tract	0278	2.6434	$156.87	$62.74	$31.37
74415	S		Contrst x-ray, urinary tract	0278	2.6434	$156.87	$62.74	$31.37
74420	S		Contrst x-ray, urinary tract	0278	2.6434	$156.87	$62.74	$31.37
74425	S		Contrst x-ray, urinary tract	0278	2.6434	$156.87	$62.74	$31.37
74430	S		Contrast x-ray, bladder	0278	2.6434	$156.87	$62.74	$31.37
74440	S		X-ray, male genital tract	0278	2.6434	$156.87	$62.74	$31.37
74445	S		X-ray exam of penis	0278	2.6434	$156.87	$62.74	$31.37
74450	S		X-ray, urethra/bladder	0278	2.6434	$156.87	$62.74	$31.37
74455	S		X-ray, urethra/bladder	0278	2.6434	$156.87	$62.74	$31.37
74470	X		X-ray exam of kidney lesion	0263	1.7476	$103.71	$24.40	$20.74
74475	S		X-ray control, cath insert	0297	5.253	$311.73	$122.13	$62.35
74480	S		X-ray control, cath insert	0296	2.2452	$133.24	$53.29	$26.65
74485	S		X-ray guide, GU dilation	0296	2.2452	$133.24	$53.29	$26.65
74710	X		X-ray measurement of pelvis	0261	1.2901	$76.56		$15.31
74740	X		X-ray, female genital tract	0264	3.524	$209.12	$79.41	$41.82
74742	X		X-ray, fallopian tube	0264	3.524	$209.12	$79.41	$41.82
74775	S		X-ray exam of perineum	0278	2.6434	$156.87	$62.74	$31.37
75552	S		Heart mri for morph w/o dye	0336	6.0742	$360.46	$144.18	$72.09
75553	S		Heart mri for morph w/dye	0284	6.4201	$380.99	$152.39	$76.20
75554	S		Cardiac MRI/function	0336	6.0742	$360.46	$144.18	$72.09
75555	S		Cardiac MRI/limited study	0336	6.0742	$360.46	$144.18	$72.09
75556	E		Cardiac MRI/flow mapping					
75600	S		Contrast x-ray exam of aorta	0280	20.7902	$1,233.75	$353.85	$246.75
75605	S		Contrast x-ray exam of aorta	0280	20.7902	$1,233.75	$353.85	$246.75
75625	S		Contrast x-ray exam of aorta	0280	20.7902	$1,233.75	$353.85	$246.75
75630	S		X-ray aorta, leg arteries	0280	20.7902	$1,233.75	$353.85	$246.75
75635*	S		Ct angio abdominal arteries	0662	5.1621	$306.33	$122.53	$61.27
75650	S		Artery x-rays, head & neck	0280	20.7902	$1,233.75	$353.85	$246.75
75658	S		Artery x-rays, arm	0279	8.9319	$530.05	$150.03	$106.01
75660	S		Artery x-rays, head & neck	0668	6.5024	$385.87	$114.67	$77.17
75662	S		Artery x-rays, head & neck	0280	20.7902	$1,233.75	$353.85	$246.75
75665	S		Artery x-rays, head & neck	0280	20.7902	$1,233.75	$353.85	$246.75
75671	S		Artery x-rays, head & neck	0280	20.7902	$1,233.75	$353.85	$246.75
75676	S		Artery x-rays, neck	0280	20.7902	$1,233.75	$353.85	$246.75
75680	S		Artery x-rays, neck	0280	20.7902	$1,233.75	$353.85	$246.75
75685	S		Artery x-rays, spine	0280	20.7902	$1,233.75	$353.85	$246.75
75705	S		Artery x-rays, spine	0668	6.5024	$385.87	$114.67	$77.17
75710	S		Artery x-rays, arm/leg	0280	20.7902	$1,233.75	$353.85	$246.75
75716	S		Artery x-rays, arms/legs	0280	20.7902	$1,233.75	$353.85	$246.75
75722	S		Artery x-rays, kidney	0280	20.7902	$1,233.75	$353.85	$246.75

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
75724	S		Artery x-rays, kidneys	0280	20.7902	$1,233.75	$353.85	$246.75
75726	S		Artery x-rays, abdomen	0280	20.7902	$1,233.75	$353.85	$246.75
75731	S		Artery x-rays, adrenal gland	0280	20.7902	$1,233.75	$353.85	$246.75
75733	S		Artery x-rays, adrenals	0668	6.5024	$385.87	$114.67	$77.17
75736	S		Artery x-rays, pelvis	0280	20.7902	$1,233.75	$353.85	$246.75
75741	S		Artery x-rays, lung	0279	8.9319	$530.05	$150.03	$106.01
75743	S		Artery x-rays, lungs	0280	20.7902	$1,233.75	$353.85	$246.75
75746	S		Artery x-rays, lung	0279	8.9319	$530.05	$150.03	$106.01
75756	S		Artery x-rays, chest	0279	8.9319	$530.05	$150.03	$106.01
75774	S		Artery x-ray, each vessel	0279	8.9319	$530.05	$150.03	$106.01
75790	S		Visualize A-V shunt	0279	8.9319	$530.05	$150.03	$106.01
75801	X		Lymph vessel x-ray, arm/leg	0264	3.524	$209.12	$79.41	$41.82
75803	X		Lymph vessel x-ray,arms/legs	0264	3.524	$209.12	$79.41	$41.82
75805	X		Lymph vessel x-ray, trunk	0264	3.524	$209.12	$79.41	$41.82
75807	X		Lymph vessel x-ray, trunk	0264	3.524	$209.12	$79.41	$41.82
75809	X		Nonvascular shunt, x-ray	0263	1.7476	$103.71	$24.40	$20.74
75810	S		Vein x-ray, spleen/liver	0279	8.9319	$530.05	$150.03	$106.01
75820	S		Vein x-ray, arm/leg	0668	6.5024	$385.87	$114.67	$77.17
75822	S		Vein x-ray, arms/legs	0668	6.5024	$385.87	$114.67	$77.17
75825	S		Vein x-ray, trunk	0279	8.9319	$530.05	$150.03	$106.01
75827	S		Vein x-ray, chest	0279	8.9319	$530.05	$150.03	$106.01
75831	S		Vein x-ray, kidney	0279	8.9319	$530.05	$150.03	$106.01
75833	S		Vein x-ray, kidneys	0279	8.9319	$530.05	$150.03	$106.01
75840	S		Vein x-ray, adrenal gland	0280	20.7902	$1,233.75	$353.85	$246.75
75842	S		Vein x-ray, adrenal glands	0280	20.7902	$1,233.75	$353.85	$246.75
75860	S		Vein x-ray, neck	0668	6.5024	$385.87	$114.67	$77.17
75870	S		Vein x-ray, skull	0668	6.5024	$385.87	$114.67	$77.17
75872	S		Vein x-ray, skull	0279	8.9319	$530.05	$150.03	$106.01
75880	S		Vein x-ray, eye socket	0668	6.5024	$385.87	$114.67	$77.17
75885	S		Vein x-ray, liver	0280	20.7902	$1,233.75	$353.85	$246.75
75887	S		Vein x-ray, liver	0279	8.9319	$530.05	$150.03	$106.01
75889	S		Vein x-ray, liver	0280	20.7902	$1,233.75	$353.85	$246.75
75891	S		Vein x-ray, liver	0279	8.9319	$530.05	$150.03	$106.01
75893	N		Venous sampling by catheter					
75894	S		X-rays, transcath therapy	0297	5.253	$311.73	$122.13	$62.35
75896	S		X-rays, transcath therapy	0297	5.253	$311.73	$122.13	$62.35
75898	X		Follow-up angiography	0263	1.7476	$103.71	$24.40	$20.74
75900	C		Arterial catheter exchange					
75901	X		Remove cva device obstruct	0263	1.7476	$103.71	$24.40	$20.74
75902	X		Remove cva lumen obstruct	0263	1.7476	$103.71	$24.40	$20.74
75940	S		X-ray placement, vein filter	0297	5.253	$311.73	$122.13	$62.35
75945	S		Intravascular us	0267	2.6327	$156.23	$62.18	$31.25
75946	S		Intravascular us add-on	0266	1.6393	$97.28	$38.91	$19.46
75952	C		Endovasc repair abdom aorta					
75953	C		Abdom aneurysm endovas rpr					
75954	C		Iliac aneurysm endovas rpr					
75960	S		Transcatheter intro, stent	0668	6.5024	$385.87	$114.67	$77.17
75961	S		Retrieval, broken catheter	0668	6.5024	$385.87	$114.67	$77.17
75962	S		Repair arterial blockage	0668	6.5024	$385.87	$114.67	$77.17
75964	S		Repair artery blockage, each	0668	6.5024	$385.87	$114.67	$77.17
75966	S		Repair arterial blockage	0668	6.5024	$385.87	$114.67	$77.17
75968	S		Repair artery blockage, each	0668	6.5024	$385.87	$114.67	$77.17
75970	S		Vascular biopsy	0668	6.5024	$385.87	$114.67	$77.17
75978	S		Repair venous blockage	0668	6.5024	$385.87	$114.67	$77.17
75980	S		Contrast xray exam bile duct	0297	5.253	$311.73	$122.13	$62.35
75982	S		Contrast xray exam bile duct	0297	5.253	$311.73	$122.13	$62.35
75984	X		Xray control catheter change	0263	1.7476	$103.71	$24.40	$20.74
75989	N		Abscess drainage under x-ray					
75992	S		Atherectomy, x-ray exam	0279	8.9319	$530.05	$150.03	$106.01
75993	S		Atherectomy, x-ray exam	0279	8.9319	$530.05	$150.03	$106.01
75994	S		Atherectomy, x-ray exam	0279	8.9319	$530.05	$150.03	$106.01
75995	S		Atherectomy, x-ray exam	0279	8.9319	$530.05	$150.03	$106.01
75996	S		Atherectomy, x-ray exam	0279	8.9319	$530.05	$150.03	$106.01
75998	N		Fluoroguide for vein device					
76000	X		Fluoroscope examination	0272	1.3801	$81.90	$32.76	$16.38
76001	N		Fluoroscope exam, extensive					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
76003	N		Needle localization by x-ray					
76005	N		Fluoroguide for spine inject					
76006	X		X-ray stress view	0260	0.7555	$44.83	$17.93	$8.97
76010	X		X-ray, nose to rectum	0260	0.7555	$44.83	$17.93	$8.97
76012	S		Percut vertebroplasty fluor	0274	3.0413	$180.48	$72.19	$36.10
76013	S		Percut vertebroplasty, ct	0274	3.0413	$180.48	$72.19	$36.10
76020	X		X-rays for bone age	0260	0.7555	$44.83	$17.93	$8.97
76040	X		X-rays, bone evaluation	0261	1.2901	$76.56		$15.31
76061	X		X-rays, bone survey	0261	1.2901	$76.56		$15.31
76062	X		X-rays, bone survey	0261	1.2901	$76.56		$15.31
76065	X		X-rays, bone evaluation	0261	1.2901	$76.56		$15.31
76066	X		Joint survey, single view	0260	0.7555	$44.83	$17.93	$8.97
76070	S		CT scan, bone density study	0288	1.2568	$74.58		$14.92
76071	S		Ct bone density, peripheral	0282	1.6542	$98.17	$39.26	$19.63
76075	S		Dexa, axial skeleton study	0288	1.2568	$74.58		$14.92
76076	S		Dexa, peripheral study	0665	0.6464	$38.36		$7.67
76077	X		Dxa bone density/v-fracture	0260	0.7555	$44.83	$17.93	$8.97
76078	X		Radiographic absorptiometry	0260	0.7555	$44.83	$17.93	$8.97
76080	X		X-ray exam of fistula	0263	1.7476	$103.71	$24.40	$20.74
76082	A		Computer mammogram add-on					
76083	A		Computer mammogram add-on					
76086	X		X-ray of mammary duct	0263	1.7476	$103.71	$24.40	$20.74
76088	X		X-ray of mammary ducts	0263	1.7476	$103.71	$24.40	$20.74
76090	A		Mammogram, one breast					
76091	A		Mammogram, both breasts					
76092	A		Mammogram, screening					
76093	E		Magnetic image, breast					
76094	E		Magnetic image, both breasts					
76095	X		Stereotactic breast biopsy	0264	3.524	$209.12	$79.41	$41.82
76096	X		X-ray of needle wire, breast	0263	1.7476	$103.71	$24.40	$20.74
76098	X		X-ray exam, breast specimen	0260	0.7555	$44.83	$17.93	$8.97
76100	X		X-ray exam of body section	0261	1.2901	$76.56		$15.31
76101	X		Complex body section x-ray	0263	1.7476	$103.71	$24.40	$20.74
76102	X		Complex body section x-rays	0264	3.524	$209.12	$79.41	$41.82
76120	X		Cine/video x-rays	0272	1.3801	$81.90	$32.76	$16.38
76125	X		Cine/video x-rays add-on	0260	0.7555	$44.83	$17.93	$8.97
76140	E		X-ray consultation					
76150	X		X-ray exam, dry process	0260	0.7555	$44.83	$17.93	$8.97
76350	N		Special x-ray contrast study					
76355	S		Ct scan for localization	0283	4.4253	$262.61	$105.04	$52.52
76360	S		Ct scan for needle biopsy	0283	4.4253	$262.61	$105.04	$52.52
76362	S		Ct guide for tissue ablation	0332	3.2694	$194.02	$77.60	$38.80
76370	S		Ct scan for therapy guide	0282	1.6542	$98.17	$39.26	$19.63
76375	S		3d/holograph reconstr add-on	0282	1.6542	$98.17	$39.26	$19.63
76380	S		CAT scan follow-up study	0282	1.6542	$98.17	$39.26	$19.63
76390	E		Mr spectroscopy					
76393	S		Mr guidance for needle place	0335	5.1581	$306.10	$122.43	$61.22
76394	S		Mri for tissue ablation	0335	5.1581	$306.10	$122.43	$61.22
76400	S		Magnetic image, bone marrow	0335	5.1581	$306.10	$122.43	$61.22
76496	X		Fluoroscopic procedure	0272	1.3801	$81.90	$32.76	$16.38
76497	S		Ct procedure	0282	1.6542	$98.17	$39.26	$19.63
76498	S		Mri procedure	0335	5.1581	$306.10	$122.43	$61.22
76499	X		Radiographic procedure	0260	0.7555	$44.83	$17.93	$8.97
76506	S		Echo exam of head	0265	1.0213	$60.61	$24.24	$12.12
76510	S		Ophth us, b & quant a	0266	1.6393	$97.28	$38.91	$19.46
76511	S		Echo exam of eye	0266	1.6393	$97.28	$38.91	$19.46
76512	S		Echo exam of eye	0266	1.6393	$97.28	$38.91	$19.46
76513	S		Echo exam of eye, water bath	0266	1.6393	$97.28	$38.91	$19.46
76514	X		Echo exam of eye, thickness	0340	0.6384	$37.88		$7.58
76516	S		Echo exam of eye	0265	1.0213	$60.61	$24.24	$12.12
76519	S		Echo exam of eye	0266	1.6393	$97.28	$38.91	$19.46
76529	S		Echo exam of eye	0265	1.0213	$60.61	$24.24	$12.12
76536	S		Us exam of head and neck	0266	1.6393	$97.28	$38.91	$19.46
76604*	S		Us exam, chest, b-scan	0266	1.6393	$97.28	$38.91	$19.46
76645*	S		Us exam, breast(s)	0265	1.0213	$60.61	$24.24	$12.12
76700*	S		Us exam, abdom, complete	0266	1.6393	$97.28	$38.91	$19.46

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
76705*	S		Echo exam of abdomen	0266	1.6393	$97.28	$38.91	$19.46
76770*	S		Us exam abdo back wall, comp	0266	1.6393	$97.28	$38.91	$19.46
76775*	S		Us exam abdo back wall, lim	0266	1.6393	$97.28	$38.91	$19.46
76778*	S		Us exam kidney transplant	0266	1.6393	$97.28	$38.91	$19.46
76800	S		Us exam, spinal canal	0266	1.6393	$97.28	$38.91	$19.46
76801	S		Ob us < 14 wks, single fetus	0266	1.6393	$97.28	$38.91	$19.46
76802	S		Ob us < 14 wks, add'l fetus	0265	1.0213	$60.61	$24.24	$12.12
76805	S		Us exam, pg uterus, compl	0266	1.6393	$97.28	$38.91	$19.46
76810	S		Us exam, pg uterus, mult	0266	1.6393	$97.28	$38.91	$19.46
76811	S		Ob us, detailed, sngl fetus	0267	2.6327	$156.23	$62.18	$31.25
76812	S		Ob us, detailed, addl fetus	0266	1.6393	$97.28	$38.91	$19.46
76815	S		Us exam, pg uterus limit	0265	1.0213	$60.61	$24.24	$12.12
76816	S		Us exam pg uterus repeat	0265	1.0213	$60.61	$24.24	$12.12
76817	S		Transvaginal us, obstetric	0266	1.6393	$97.28	$38.91	$19.46
76818	S		Fetal biophys profile w/nst	0266	1.6393	$97.28	$38.91	$19.46
76819	S		Fetal biophys profil w/o nst	0266	1.6393	$97.28	$38.91	$19.46
76820	S		Umbilical artery echo	0096	1.6307	$96.77	$38.70	$19.35
76821	S		Middle cerebral artery echo	0096	1.6307	$96.77	$38.70	$19.35
76825	S		Echo exam of fetal heart	0671	1.7028	$101.05	$40.42	$20.21
76826	S		Echo exam of fetal heart	0697	1.5357	$91.13	$36.45	$18.23
76827	S		Echo exam of fetal heart	0671	1.7028	$101.05	$40.42	$20.21
76828	S		Echo exam of fetal heart	0697	1.5357	$91.13	$36.45	$18.23
76830*	S		Transvaginal us, non-ob	0266	1.6393	$97.28	$38.91	$19.46
76831*	S		Echo exam, uterus	0267	2.6327	$156.23	$62.18	$31.25
76856*	S		Us exam, pelvic, complete	0266	1.6393	$97.28	$38.91	$19.46
76857*	S		Us exam, pelvic, limited	0265	1.0213	$60.61	$24.24	$12.12
76870	S		Us exam, scrotum	0266	1.6393	$97.28	$38.91	$19.46
76872	S		Us, transrectal	0266	1.6393	$97.28	$38.91	$19.46
76873	S		Echograp trans r, pros study	0266	1.6393	$97.28	$38.91	$19.46
76880	S		Us exam, extremity	0266	1.6393	$97.28	$38.91	$19.46
76885	S		Us exam infant hips, dynamic	0265	1.0213	$60.61	$24.24	$12.12
76886	S		Us exam infant hips, static	0266	1.6393	$97.28	$38.91	$19.46
76930	S		Echo guide, cardiocentesis	0268	1.061	$62.96		$12.59
76932	S		Echo guide for heart biopsy	0268	1.061	$62.96		$12.59
76936	S		Echo guide for artery repair	0268	1.061	$62.96		$12.59
76937	N		Us guide, vascular access					
76940	S		Us guide, tissue ablation	0268	1.061	$62.96		$12.59
76941	S		Echo guide for transfusion	0268	1.061	$62.96		$12.59
76942	S		Echo guide for biopsy	0268	1.061	$62.96		$12.59
76945	S		Echo guide, villus sampling	0268	1.061	$62.96		$12.59
76946	S		Echo guide for amniocentesis	0268	1.061	$62.96		$12.59
76948	S		Echo guide, ova aspiration	0268	1.061	$62.96		$12.59
76950	S		Echo guidance radiotherapy	0268	1.061	$62.96		$12.59
76965	S		Echo guidance radiotherapy	0268	1.061	$62.96		$12.59
76970	S		Ultrasound exam follow-up	0265	1.0213	$60.61	$24.24	$12.12
76975	S		GI endoscopic ultrasound	0266	1.6393	$97.28	$38.91	$19.46
76977	X		Us bone density measure	0340	0.6384	$37.88		$7.58
76986	S		Ultrasound guide intraoper	0266	1.6393	$97.28	$38.91	$19.46
76999	S		Echo examination procedure	0265	1.0213	$60.61	$24.24	$12.12
77261	E		Radiation therapy planning					
77262	E		Radiation therapy planning					
77263	E		Radiation therapy planning					
77280	X		Set radiation therapy field	0304	1.7738	$105.26	$41.52	$21.05
77285	X		Set radiation therapy field	0305	4.0036	$237.59	$91.38	$47.52
77290	X		Set radiation therapy field	0305	4.0036	$237.59	$91.38	$47.52
77295	X		Set radiation therapy field	0310	13.949	$827.78	$325.27	$165.56
77299	E		Radiation therapy planning					
77300	X		Radiation therapy dose plan	0304	1.7738	$105.26	$41.52	$21.05
77301	X		Radiotherapy dose plan, imrt	0310	13.949	$827.78	$325.27	$165.56
77305	X		Teletx isodose plan simple	0304	1.7738	$105.26	$41.52	$21.05
77310	X		Teletx isodose plan intermed	0305	4.0036	$237.59	$91.38	$47.52
77315	X		Teletx isodose plan complex	0305	4.0036	$237.59	$91.38	$47.52
77321	X		Special teletx port plan	0305	4.0036	$237.59	$91.38	$47.52
77326	X		Radiation therapy dose plan	0304	1.7738	$105.26	$41.52	$21.05
77327	X		Brachytx isodose calc interm	0305	4.0036	$237.59	$91.38	$47.52
77328	X		Brachytx isodose plan compl	0305	4.0036	$237.59	$91.38	$47.52

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
77331	X		Special radiation dosimetry	0304	1.7738	$105.26	$41.52	$21.05
77332	X		Radiation treatment aid(s)	0303	2.8356	$168.27	$66.95	$33.65
77333	X		Radiation treatment aid(s)	0303	2.8356	$168.27	$66.95	$33.65
77334	X		Radiation treatment aid(s)	0303	2.8356	$168.27	$66.95	$33.65
77336	X		Radiation physics consult	0304	1.7738	$105.26	$41.52	$21.05
77370	X		Radiation physics consult	0304	1.7738	$105.26	$41.52	$21.05
77399	X		External radiation dosimetry	0304	1.7738	$105.26	$41.52	$21.05
77401	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77402	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77403	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77404	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77406	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77407	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77408	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77409	S		Radiation treatment delivery	0300	1.5198	$90.19		$18.04
77411	S		Radiation treatment delivery	0301	2.2195	$131.71		$26.34
77412	S		Radiation treatment delivery	0301	2.2195	$131.71		$26.34
77413	S		Radiation treatment delivery	0301	2.2195	$131.71		$26.34
77414	S		Radiation treatment delivery	0301	2.2195	$131.71		$26.34
77416	S		Radiation treatment delivery	0301	2.2195	$131.71		$26.34
77417	X		Radiology port film(s)	0260	0.7555	$44.83	$17.93	$8.97
77418	S		Radiation tx delivery, imrt	0412	5.3643	$318.33		$63.67
77427	E		Radiation tx management, x5					
77431	E		Radiation therapy management					
77432	E		Stereotactic radiation trmt					
77470	S		Special radiation treatment	0299	5.8482	$347.05		$69.41
77499	E		Radiation therapy management					
77520	S		Proton trmt, simple w/o comp	0664	12.9439	$768.13		$153.63
77522	S		Proton trmt, simple w/comp	0664	12.9439	$768.13		$153.63
77523	S		Proton trmt, intermediate	0667	15.4857	$918.97		$183.79
77525	S		Proton treatment, complex	0667	15.4857	$918.97		$183.79
77600	S		Hyperthermia treatment	0314	5.9945	$355.73	$98.36	$71.15
77605	S		Hyperthermia treatment	0314	5.9945	$355.73	$98.36	$71.15
77610	S		Hyperthermia treatment	0314	5.9945	$355.73	$98.36	$71.15
77615	S		Hyperthermia treatment	0314	5.9945	$355.73	$98.36	$71.15
77620	S		Hyperthermia treatment	0314	5.9945	$355.73	$98.36	$71.15
77750	S		Infuse radioactive materials	0301	2.2195	$131.71		$26.34
77761	S		Apply intrcav radiat simple	0312	5.0032	$296.90		$59.38
77762	S		Apply intrcav radiat interm	0312	5.0032	$296.90		$59.38
77763	S		Apply intrcav radiat compl	0312	5.0032	$296.90		$59.38
77776	S		Apply interstit radiat simpl	0312	5.0032	$296.90		$59.38
77777	S		Apply interstit radiat inter	0312	5.0032	$296.90		$59.38
77778	S		Apply interstit radiat compl	0651	12.1448	$720.71		$144.14
77781	S		High intensity brachytherapy	0313	12.8655	$763.48		$152.70
77782	S		High intensity brachytherapy	0313	12.8655	$763.48		$152.70
77783	S		High intensity brachytherapy	0313	12.8655	$763.48		$152.70
77784	S		High intensity brachytherapy	0313	12.8655	$763.48		$152.70
77789	S		Apply surface radiation	0300	1.5198	$90.19		$18.04
77790	N		Radiation handling					
77799	S		Radium/radioisotope therapy	0313	12.8655	$763.48		$152.70
78000	S		Thyroid, single uptake	0389	1.4976	$88.87	$35.54	$17.77
78001	S		Thyroid, multiple uptakes	0389	1.4976	$88.87	$35.54	$17.77
78003	S		Thyroid suppress/stimul	0389	1.4976	$88.87	$35.54	$17.77
78006	S		Thyroid imaging with uptake	0390	2.5562	$151.69	$60.67	$30.34
78007	S		Thyroid image, mult uptakes	0391	2.8774	$170.75	$68.30	$34.15
78010	S		Thyroid imaging	0390	2.5562	$151.69	$60.67	$30.34
78011	S		Thyroid imaging with flow	0390	2.5562	$151.69	$60.67	$30.34
78015	S		Thyroid met imaging	0406	4.3035	$255.38	$102.15	$51.08
78016	S		Thyroid met imaging/studies	0406	4.3035	$255.38	$102.15	$51.08
78018	S		Thyroid met imaging, body	0406	4.3035	$255.38	$102.15	$51.08
78020	S		Thyroid met uptake	0399	1.5192	$90.15	$36.06	$18.03
78070	S		Parathyroid nuclear imaging	0391	2.8774	$170.75	$68.30	$34.15
78075	S		Adrenal nuclear imaging	0391	2.8774	$170.75	$68.30	$34.15
78099	S		Endocrine nuclear procedure	0390	2.5562	$151.69	$60.67	$30.34
78102	S		Bone marrow imaging, ltd	0400	4.1335	$245.29	$98.11	$49.06
78103	S		Bone marrow imaging, mult	0400	4.1335	$245.29	$98.11	$49.06

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78104	S		Bone marrow imaging, body	0400	4.1335	$245.29	$98.11	$49.06
78110	S		Plasma volume, single	0393	3.4438	$204.37	$81.74	$40.87
78111	S		Plasma volume, multiple	0393	3.4438	$204.37	$81.74	$40.87
78120	S		Red cell mass, single	0393	3.4438	$204.37	$81.74	$40.87
78121	S		Red cell mass, multiple	0393	3.4438	$204.37	$81.74	$40.87
78122	S		Blood volume	0393	3.4438	$204.37	$81.74	$40.87
78130	S		Red cell survival study	0393	3.4438	$204.37	$81.74	$40.87
78135	S		Red cell survival kinetics	0393	3.4438	$204.37	$81.74	$40.87
78140	S		Red cell sequestration	0393	3.4438	$204.37	$81.74	$40.87
78160	S		Plasma iron turnover	0393	3.4438	$204.37	$81.74	$40.87
78162	S		Radioiron absorption exam	0393	3.4438	$204.37	$81.74	$40.87
78170	S		Red cell iron utilization	0393	3.4438	$204.37	$81.74	$40.87
78172	S		Total body iron estimation	0393	3.4438	$204.37	$81.74	$40.87
78185	S		Spleen imaging	0400	4.1335	$245.29	$98.11	$49.06
78190	S		Platelet survival, kinetics	0389	1.4976	$88.87	$35.54	$17.77
78191	S		Platelet survival	0389	1.4976	$88.87	$35.54	$17.77
78195	S		Lymph system imaging	0400	4.1335	$245.29	$98.11	$49.06
78199	S		Blood/lymph nuclear exam	0400	4.1335	$245.29	$98.11	$49.06
78201	S		Liver imaging	0394	4.463	$264.85	$105.93	$52.97
78202	S		Liver imaging with flow	0394	4.463	$264.85	$105.93	$52.97
78205	S		Liver imaging (3D)	0394	4.463	$264.85	$105.93	$52.97
78206	S		Liver image (3d) with flow	0394	4.463	$264.85	$105.93	$52.97
78215	S		Liver and spleen imaging	0394	4.463	$264.85	$105.93	$52.97
78216	S		Liver & spleen image/flow	0394	4.463	$264.85	$105.93	$52.97
78220	S		Liver function study	0394	4.463	$264.85	$105.93	$52.97
78223	S		Hepatobiliary imaging	0394	4.463	$264.85	$105.93	$52.97
78230	S		Salivary gland imaging	0395	3.8699	$229.65	$91.86	$45.93
78231	S		Serial salivary imaging	0395	3.8699	$229.65	$91.86	$45.93
78232	S		Salivary gland function exam	0395	3.8699	$229.65	$91.86	$45.93
78258	S		Esophageal motility study	0395	3.8699	$229.65	$91.86	$45.93
78261	S		Gastric mucosa imaging	0395	3.8699	$229.65	$91.86	$45.93
78262	S		Gastroesophageal reflux exam	0395	3.8699	$229.65	$91.86	$45.93
78264	S		Gastric emptying study	0395	3.8699	$229.65	$91.86	$45.93
78267	A		Breath tst attain/anal c-14					
78268	A		Breath test analysis, c-14					
78270	S		Vit B-12 absorption exam	0389	1.4976	$88.87	$35.54	$17.77
78271	S		Vit b-12 absrp exam, int fac	0389	1.4976	$88.87	$35.54	$17.77
78272	S		Vit B-12 absorp, combined	0389	1.4976	$88.87	$35.54	$17.77
78278	S		Acute GI blood loss imaging	0395	3.8699	$229.65	$91.86	$45.93
78282	S		GI protein loss exam	0395	3.8699	$229.65	$91.86	$45.93
78290	S		Meckel's divert exam	0395	3.8699	$229.65	$91.86	$45.93
78291	S		Leveen/shunt patency exam	0395	3.8699	$229.65	$91.86	$45.93
78299	S		GI nuclear procedure	0395	3.8699	$229.65	$91.86	$45.93
78300	S		Bone imaging, limited area	0396	4.1426	$245.83	$98.33	$49.17
78305	S		Bone imaging, multiple areas	0396	4.1426	$245.83	$98.33	$49.17
78306	S		Bone imaging, whole body	0396	4.1426	$245.83	$98.33	$49.17
78315	S		Bone imaging, 3 phase	0396	4.1426	$245.83	$98.33	$49.17
78320	S		Bone imaging (3D)	0396	4.1426	$245.83	$98.33	$49.17
78350	X		Bone mineral, single photon	0260	0.7555	$44.83	$17.93	$8.97
78351	E		Bone mineral, dual photon					
78399	S		Musculoskeletal nuclear exam	0396	4.1426	$245.83	$98.33	$49.17
78414	S		Non-imaging heart function	0398	4.3093	$255.73	$102.29	$51.15
78428	S		Cardiac shunt imaging	0398	4.3093	$255.73	$102.29	$51.15
78445	S		Vascular flow imaging	0397	2.2646	$134.39	$53.75	$26.88
78455	S		Venous thrombosis study	0397	2.2646	$134.39	$53.75	$26.88
78456	S		Acute venous thrombus image	0397	2.2646	$134.39	$53.75	$26.88
78457	S		Venous thrombosis imaging	0397	2.2646	$134.39	$53.75	$26.88
78458	S		Ven thrombosis images, bilat	0397	2.2646	$134.39	$53.75	$26.88
78459	S		Heart muscle imaging (PET)	0285	17.1798	$1,019.50	$318.72	$203.90
78460	S		Heart muscle blood, single	0398	4.3093	$255.73	$102.29	$51.15
78461	S		Heart muscle blood, multiple	0377	6.8344	$405.57	$162.22	$81.11
78464	S		Heart image (3d), single	0398	4.3093	$255.73	$102.29	$51.15
78465	S		Heart image (3d), multiple	0377	6.8344	$405.57	$162.22	$81.11
78466	S		Heart infarct image	0398	4.3093	$255.73	$102.29	$51.15
78468	S		Heart infarct image (ef)	0398	4.3093	$255.73	$102.29	$51.15
78469	S		Heart infarct image (3D)	0398	4.3093	$255.73	$102.29	$51.15

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78472	S		Gated heart, planar, single	0398	4.3093	$255.73	$102.29	$51.15
78473	S		Gated heart, multiple	0376	5.1975	$308.44	$121.42	$61.69
78478	S		Heart wall motion add-on	0399	1.5192	$90.15	$36.06	$18.03
78480	S		Heart function add-on	0399	1.5192	$90.15	$36.06	$18.03
78481	S		Heart first pass, single	0398	4.3093	$255.73	$102.29	$51.15
78483	S		Heart first pass, multiple	0376	5.1975	$308.44	$121.42	$61.69
78491	S		Heart image (pet), single	0285	17.1798	$1,019.50	$318.72	$203.90
78492	S		Heart image (pet), multiple	0285	17.1798	$1,019.50	$318.72	$203.90
78494	S		Heart image, spect	0398	4.3093	$255.73	$102.29	$51.15
78496	S		Heart first pass add-on	0399	1.5192	$90.15	$36.06	$18.03
78499	S		Cardiovascular nuclear exam	0398	4.3093	$255.73	$102.29	$51.15
78580	S		Lung perfusion imaging	0401	3.415	$202.66	$81.06	$40.53
78584	S		Lung V/Q image single breath	0378	5.4997	$326.37	$130.54	$65.27
78585	S		Lung V/Q imaging	0378	5.4997	$326.37	$130.54	$65.27
78586	S		Aerosol lung image, single	0401	3.415	$202.66	$81.06	$40.53
78587	S		Aerosol lung image, multiple	0401	3.415	$202.66	$81.06	$40.53
78588	S		Perfusion lung image	0378	5.4997	$326.37	$130.54	$65.27
78591	S		Vent image, 1 breath, 1 proj	0401	3.415	$202.66	$81.06	$40.53
78593	S		Vent image, 1 proj, gas	0401	3.415	$202.66	$81.06	$40.53
78594	S		Vent image, mult proj, gas	0401	3.415	$202.66	$81.06	$40.53
78596	S		Lung differential function	0378	5.4997	$326.37	$130.54	$65.27
78599	S		Respiratory nuclear exam	0401	3.415	$202.66	$81.06	$40.53
78600	S		Brain imaging, ltd static	0402	5.1847	$307.68	$123.07	$61.54
78601	S		Brain imaging, ltd w/flow	0402	5.1847	$307.68	$123.07	$61.54
78605	S		Brain imaging, complete	0402	5.1847	$307.68	$123.07	$61.54
78606	S		Brain imaging, compl w/flow	0402	5.1847	$307.68	$123.07	$61.54
78607	S		Brain imaging (3D)	0402	5.1847	$307.68	$123.07	$61.54
78608	S		Brain imaging (PET)	1513		$1,150.00		$230.00
78609	S		Brain imaging (PET)	1513		$1,150.00		$230.00
78610	S		Brain flow imaging only	0402	5.1847	$307.68	$123.07	$61.54
78615	S		Cerebral vascular flow image	0402	5.1847	$307.68	$123.07	$61.54
78630	S		Cerebrospinal fluid scan	0403	3.6138	$214.45	$85.78	$42.89
78635	S		CSF ventriculography	0403	3.6138	$214.45	$85.78	$42.89
78645	S		CSF shunt evaluation	0403	3.6138	$214.45	$85.78	$42.89
78647	S		Cerebrospinal fluid scan	0403	3.6138	$214.45	$85.78	$42.89
78650	S		CSF leakage imaging	0403	3.6138	$214.45	$85.78	$42.89
78660	S		Nuclear exam of tear flow	0403	3.6138	$214.45	$85.78	$42.89
78699	S		Nervous system nuclear exam	0402	5.1847	$307.68	$123.07	$61.54
78700	S		Kidney imaging, static	0267	2.6327	$156.23	$62.18	$31.25
78701	S		Kidney imaging with flow	0404	3.8559	$228.82	$91.52	$45.76
78704	S		Imaging renogram	0404	3.8559	$228.82	$91.52	$45.76
78707	S		Kidney flow/function image	0404	3.8559	$228.82	$91.52	$45.76
78708	S		Kidney flow/function image	0405	4.2674	$253.24	$101.29	$50.65
78709	S		Kidney flow/function image	0405	4.2674	$253.24	$101.29	$50.65
78710	S		Kidney imaging (3D)	0404	3.8559	$228.82	$91.52	$45.76
78715	S		Renal vascular flow exam	0404	3.8559	$228.82	$91.52	$45.76
78725	S		Kidney function study	0389	1.4976	$88.87	$35.54	$17.77
78730	X		Urinary bladder retention	0340	0.6384	$37.88		$7.58
78740	S		Ureteral reflux study	0404	3.8559	$228.82	$91.52	$45.76
78760	S		Testicular imaging	0404	3.8559	$228.82	$91.52	$45.76
78761	S		Testicular imaging/flow	0404	3.8559	$228.82	$91.52	$45.76
78799	S		Genitourinary nuclear exam	0404	3.8559	$228.82	$91.52	$45.76
78800	S		Tumor imaging, limited area	0406	4.3035	$255.38	$102.15	$51.08
78801	S		Tumor imaging, mult areas	0406	4.3035	$255.38	$102.15	$51.08
78802	S		Tumor imaging, whole body	0406	4.3035	$255.38	$102.15	$51.08
78803	S		Tumor imaging (3D)	0406	4.3035	$255.38	$102.15	$51.08
78804	S		Tumor imaging, whole body	1508		$650.00		$130.00
78805	S		Abscess imaging, ltd area	0406	4.3035	$255.38	$102.15	$51.08
78806	S		Abscess imaging, whole body	0406	4.3035	$255.38	$102.15	$51.08
78807	S		Nuclear localization/abscess	0406	4.3035	$255.38	$102.15	$51.08
78811	S		Tumor imaging (pet), limited	1513		$1,150.00		$230.00
78812	S		Tumor image (pet)/skul-thigh	1513		$1,150.00		$230.00
78813	S		Tumor image (pet) full body	1513		$1,150.00		$230.00
78814	S		Tumor image pet/ct, limited	1514		$1,250.00		$250.00
78815	S		Tumorimage pet/ct skul-thigh	1514		$1,250.00		$250.00
78816	S		Tumor image pet/ct full body	1514		$1,250.00		$250.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78890	N		Nuclear medicine data proc					
78891	N		Nuclear med data proc					
78999	S		Nuclear diagnostic exam	0389	1.4976	$88.87	$35.54	$17.77
79005	S		Nuclear rx, oral admin	0407	3.9839	$236.42	$94.56	$47.28
79101	S		Nuclear rx, iv admin	0407	3.9839	$236.42	$94.56	$47.28
79200	S		Intracavitary nuclear trmt	0407	3.9839	$236.42	$94.56	$47.28
79300	S		Interstitial nuclear therapy	0407	3.9839	$236.42	$94.56	$47.28
79403	S		Hematopoetic nuclear therapy	1507		$550.00		$110.00
79440	S		Nuclear joint therapy	0407	3.9839	$236.42	$94.56	$47.28
79445	S		Nuclear rx, intra-arterial	0407	3.9839	$236.42	$94.56	$47.28
79999	S		Nuclear medicine therapy	0407	3.9839	$236.42	$94.56	$47.28
80048	A		Basic metabolic panel					
80050	E		General health panel					
80051	A		Electrolyte panel					
80053	A		Comprehen metabolic panel					
80055	E		Obstetric panel					
80061	A		Lipid panel					
80069	A		Renal function panel					
80074	A		Acute hepatitis panel					
80076	A		Hepatic function panel					
80100	A		Drug screen, qualitate/multi					
80101	A		Drug screen, single					
80102	A		Drug confirmation					
80103	N		Drug analysis, tissue prep					
80150	A		Assay of amikacin					
80152	A		Assay of amitriptyline					
80154	A		Assay of benzodiazepines					
80156	A		Assay, carbamazepine, total					
80157	A		Assay, carbamazepine, free					
80158	A		Assay of cyclosporine					
80160	A		Assay of desipramine					
80162	A		Assay of digoxin					
80164	A		Assay, dipropylacetic acid					
80166	A		Assay of doxepin					
80168	A		Assay of ethosuximide					
80170	A		Assay of gentamicin					
80172	A		Assay of gold					
80173	A		Assay of haloperidol					
80174	A		Assay of imipramine					
80176	A		Assay of lidocaine					
80178	A		Assay of lithium					
80182	A		Assay of nortriptyline					
80184	A		Assay of phenobarbital					
80185	A		Assay of phenytoin, total					
80186	A		Assay of phenytoin, free					
80188	A		Assay of primidone					
80190	A		Assay of procainamide					
80192	A		Assay of procainamide					
80194	A		Assay of quinidine					
80196	A		Assay of salicylate					
80197	A		Assay of tacrolimus					
80198	A		Assay of theophylline					
80200	A		Assay of tobramycin					
80201	A		Assay of topiramate					
80202	A		Assay of vancomycin					
80299	A		Quantitative assay, drug					
80400	A		Acth stimulation panel					
80402	A		Acth stimulation panel					
80406	A		Acth stimulation panel					
80408	A		Aldosterone suppression eval					
80410	A		Calcitonin stimul panel					
80412	A		CRH stimulation panel					
80414	A		Testosterone response					
80415	A		Estradiol response panel					
80416	A		Renin stimulation panel					
80417	A		Renin stimulation panel					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
80418	A		Pituitary evaluation panel					
80420	A		Dexamethasone panel					
80422	A		Glucagon tolerance panel					
80424	A		Glucagon tolerance panel					
80426	A		Gonadotropin hormone panel					
80428	A		Growth hormone panel					
80430	A		Growth hormone panel					
80432	A		Insulin suppression panel					
80434	A		Insulin tolerance panel					
80435	A		Insulin tolerance panel					
80436	A		Metyrapone panel					
80438	A		TRH stimulation panel					
80439	A		TRH stimulation panel					
80440	A		TRH stimulation panel					
80500	X		Lab pathology consultation	0433	0.2581	$15.32	$6.12	$3.06
80502	X		Lab pathology consultation	0342	0.156	$9.26	$3.70	$1.85
81000	A		Urinalysis, nonauto w/scope					
81001	A		Urinalysis, auto w/scope					
81002	A		Urinalysis nonauto w/o scope					
81003	A		Urinalysis, auto, w/o scope					
81005	A		Urinalysis					
81007	A		Urine screen for bacteria					
81015	A		Microscopic exam of urine					
81020	A		Urinalysis, glass test					
81025	A		Urine pregnancy test					
81050	A		Urinalysis, volume measure					
81099	A		Urinalysis test procedure					
82000	A		Assay of blood acetaldehyde					
82003	A		Assay of acetaminophen					
82009	A		Test for acetone/ketones					
82010	A		Acetone assay					
82013	A		Acetylcholinesterase assay					
82016	A		Acylcarnitines, qual					
82017	A		Acylcarnitines, quant					
82024	A		Assay of acth					
82030	A		Assay of adp & amp					
82040	A		Assay of serum albumin					
82042	A		Assay of urine albumin					
82043	A		Microalbumin, quantitative					
82044	A		Microalbumin, semiquant					
82045	A		Albumin, ischemia modified					
82055	A		Assay of ethanol					
82075	A		Assay of breath ethanol					
82085	A		Assay of aldolase					
82088	A		Assay of aldosterone					
82101	A		Assay of urine alkaloids					
82103	A		Alpha-1-antitrypsin, total					
82104	A		Alpha-1-antitrypsin, pheno					
82105	A		Alpha-fetoprotein, serum					
82106	A		Alpha-fetoprotein, amniotic					
82108	A		Assay of aluminum					
82120	A		Amines, vaginal fluid qual					
82127	A		Amino acid, single qual					
82128	A		Amino acids, mult qual					
82131	A		Amino acids, single quant					
82135	A		Assay, aminolevulinic acid					
82136	A		Amino acids, quant, 2-5					
82139	A		Amino acids, quan, 6 or more					
82140	A		Assay of ammonia					
82143	A		Amniotic fluid scan					
82145	A		Assay of amphetamines					
82150	A		Assay of amylase					
82154	A		Androstanediol glucuronide					
82157	A		Assay of androstenedione					
82160	A		Assay of androsterone					
82163	A		Assay of angiotensin II					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82164	A		Angiotensin I enzyme test					
82172	A		Assay of apolipoprotein					
82175	A		Assay of arsenic					
82180	A		Assay of ascorbic acid					
82190	A		Atomic absorption					
82205	A		Assay of barbiturates					
82232	A		Assay of beta-2 protein					
82239	A		Bile acids, total					
82240	A		Bile acids, cholylglycine					
82247	A		Bilirubin, total					
82248	A		Bilirubin, direct					
82252	A		Fecal bilirubin test					
82261	A		Assay of biotinidase					
82270	A		Test for blood, feces					
82273	A		Test for blood, other source					
82274	A		Assay test for blood, fecal					
82286	A		Assay of bradykinin					
82300	A		Assay of cadmium					
82306	A		Assay of vitamin D					
82307	A		Assay of vitamin D					
82308	A		Assay of calcitonin					
82310	A		Assay of calcium					
82330	A		Assay of calcium					
82331	A		Calcium infusion test					
82340	A		Assay of calcium in urine					
82355	A		Calculus analysis, qual					
82360	A		Calculus assay, quant					
82365	A		Calculus spectroscopy					
82370	A		X-ray assay, calculus					
82373	A		Assay, c-d transfer measure					
82374	A		Assay, blood carbon dioxide					
82375	A		Assay, blood carbon monoxide					
82376	A		Test for carbon monoxide					
82378	A		Carcinoembryonic antigen					
82379	A		Assay of carnitine					
82380	A		Assay of carotene					
82382	A		Assay, urine catecholamines					
82383	A		Assay, blood catecholamines					
82384	A		Assay, three catecholamines					
82387	A		Assay of cathepsin-d					
82390	A		Assay of ceruloplasmin					
82397	A		Chemiluminescent assay					
82415	A		Assay of chloramphenicol					
82435	A		Assay of blood chloride					
82436	A		Assay of urine chloride					
82438	A		Assay, other fluid chlorides					
82441	A		Test for chlorohydrocarbons					
82465	A		Assay, bld/serum cholesterol					
82480	A		Assay, serum cholinesterase					
82482	A		Assay, rbc cholinesterase					
82485	A		Assay, chondroitin sulfate					
82486	A		Gas/liquid chromatography					
82487	A		Paper chromatography					
82488	A		Paper chromatography					
82489	A		Thin layer chromatography					
82491	A		Chromotography, quant, sing					
82492	A		Chromotography, quant, mult					
82495	A		Assay of chromium					
82507	A		Assay of citrate					
82520	A		Assay of cocaine					
82523	A		Collagen crosslinks					
82525	A		Assay of copper					
82528	A		Assay of corticosterone					
82530	A		Cortisol, free					
82533	A		Total cortisol					
82540	A		Assay of creatine					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82541	A		Column chromotography, qual					
82542	A		Column chromotography, quant					
82543	A		Column chromotograph/isotope					
82544	A		Column chromotograph/isotope					
82550	A		Assay of ck (cpk)					
82552	A		Assay of cpk in blood					
82553	A		Creatine, MB fraction					
82554	A		Creatine, isoforms					
82565	A		Assay of creatinine					
82570	A		Assay of urine creatinine					
82575	A		Creatinine clearance test					
82585	A		Assay of cryofibrinogen					
82595	A		Assay of cryoglobulin					
82600	A		Assay of cyanide					
82607	A		Vitamin B-12					
82608	A		B-12 binding capacity					
82615	A		Test for urine cystines					
82626	A		Dehydroepiandrosterone					
82627	A		Dehydroepiandrosterone					
82633	A		Desoxycorticosterone					
82634	A		Deoxycortisol					
82638	A		Assay of dibucaine number					
82646	A		Assay of dihydrocodeinone					
82649	A		Assay of dihydromorphinone					
82651	A		Assay of dihydrotestosterone					
82652	A		Assay of dihydroxyvitamin d					
82654	A		Assay of dimethadione					
82656	A		Pancreatic elastase, fecal					
82657	A		Enzyme cell activity					
82658	A		Enzyme cell activity, ra					
82664	A		Electrophoretic test					
82666	A		Assay of epiandrosterone					
82668	A		Assay of erythropoietin					
82670	A		Assay of estradiol					
82671	A		Assay of estrogens					
82672	A		Assay of estrogen					
82677	A		Assay of estriol					
82679	A		Assay of estrone					
82690	A		Assay of ethchlorvynol					
82693	A		Assay of ethylene glycol					
82696	A		Assay of etiocholanolone					
82705	A		Fats/lipids, feces, qual					
82710	A		Fats/lipids, feces, quant					
82715	A		Assay of fecal fat					
82725	A		Assay of blood fatty acids					
82726	A		Long chain fatty acids					
82728	A		Assay of ferritin					
82731	A		Assay of fetal fibronectin					
82735	A		Assay of fluoride					
82742	A		Assay of flurazepam					
82746	A		Blood folic acid serum					
82747	A		Assay of folic acid, rbc					
82757	A		Assay of semen fructose					
82759	A		Assay of rbc galactokinase					
82760	A		Assay of galactose					
82775	A		Assay galactose transferase					
82776	A		Galactose transferase test					
82784	A		Assay of gammaglobulin igm					
82785	A		Assay of gammaglobulin ige					
82787	A		Igg 1, 2, 3 or 4, each					
82800	A		Blood pH					
82803	A		Blood gases pH, pO2 & pCO2					
82805	A		Blood gases W/02 saturation					
82810	A		Blood gases, O2 sat only					
82820	A		Hemoglobin-oxygen affinity					
82926	A		Assay of gastric acid					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82928	A		Assay of gastric acid					
82938	A		Gastrin test					
82941	A		Assay of gastrin					
82943	A		Assay of glucagon					
82945	A		Glucose other fluid					
82946	A		Glucagon tolerance test					
82947	A		Assay, glucose, blood quant					
82948	A		Reagent strip/blood glucose					
82950	A		Glucose test					
82951	A		Glucose tolerance test (GTT)					
82952	A		GTT-added samples					
82953	A		Glucose-tolbutamide test					
82955	A		Assay of g6pd enzyme					
82960	A		Test for G6PD enzyme					
82962	A		Glucose blood test					
82963	A		Assay of glucosidase					
82965	A		Assay of gdh enzyme					
82975	A		Assay of glutamine					
82977	A		Assay of GGT					
82978	A		Assay of glutathione					
82979	A		Assay, rbc glutathione					
82980	A		Assay of glutethimide					
82985	A		Glycated protein					
83001	A		Gonadotropin (FSH)					
83002	A		Gonadotropin (LH)					
83003	A		Assay, growth hormone (hgh)					
83008	A		Assay of guanosine					
83009	A		H pylori (c-13), blood					
83010	A		Assay of haptoglobin, quant					
83012	A		Assay of haptoglobins					
83013	A		H pylori analysis					
83014	A		H pylori drug admin/collect					
83015	A		Heavy metal screen					
83018	A		Quantitative screen, metals					
83020	A		Hemoglobin electrophoresis					
83021	A		Hemoglobin chromotography					
83026	A		Hemoglobin, copper sulfate					
83030	A		Fetal hemoglobin, chemical					
83033	A		Fetal hemoglobin assay, qual					
83036	A		Glycated hemoglobin test					
83045	A		Blood methemoglobin test					
83050	A		Blood methemoglobin assay					
83051	A		Assay of plasma hemoglobin					
83055	A		Blood sulfhemoglobin test					
83060	A		Blood sulfhemoglobin assay					
83065	A		Assay of hemoglobin heat					
83068	A		Hemoglobin stability screen					
83069	A		Assay of urine hemoglobin					
83070	A		Assay of hemosiderin, qual					
83071	A		Assay of hemosiderin, quant					
83080	A		Assay of b hexosaminidase					
83088	A		Assay of histamine					
83090	A		Assay of homocystine					
83150	A		Assay of for hva					
83491	A		Assay of corticosteroids					
83497	A		Assay of 5-hiaa					
83498	A		Assay of progesterone					
83499	A		Assay of progesterone					
83500	A		Assay, free hydroxyproline					
83505	A		Assay, total hydroxyproline					
83516	A		Immunoassay, nonantibody					
83518	A		Immunoassay, dipstick					
83519	A		Immunoassay, nonantibody					
83520	A		Immunoassay, RIA					
83525	A		Assay of insulin					
83527	A		Assay of insulin					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83528	A		Assay of intrinsic factor					
83540	A		Assay of iron					
83550	A		Iron binding test					
83570	A		Assay of idh enzyme					
83582	A		Assay of ketogenic steroids					
83586	A		Assay 17- ketosteroids					
83593	A		Fractionation, ketosteroids					
83605	A		Assay of lactic acid					
83615	A		Lactate (LD) (LDH) enzyme					
83625	A		Assay of ldh enzymes					
83630	A		Lactoferrin, fecal (qual)					
83632	A		Placental lactogen					
83633	A		Test urine for lactose					
83634	A		Assay of urine for lactose					
83655	A		Assay of lead					
83661	A		L/s ratio, fetal lung					
83662	A		Foam stability, fetal lung					
83663	A		Fluoro polarize, fetal lung					
83664	A		Lamellar bdy, fetal lung					
83670	A		Assay of lap enzyme					
83690	A		Assay of lipase					
83715	A		Assay of blood lipoproteins					
83716	A		Assay of blood lipoproteins					
83718	A		Assay of lipoprotein					
83719	A		Assay of blood lipoprotein					
83721	A		Assay of blood lipoprotein					
83727	A		Assay of lrh hormone					
83735	A		Assay of magnesium					
83775	A		Assay of md enzyme					
83785	A		Assay of manganese					
83788	A		Mass spectrometry qual					
83789	A		Mass spectrometry quant					
83805	A		Assay of meprobamate					
83825	A		Assay of mercury					
83835	A		Assay of metanephrines					
83840	A		Assay of methadone					
83857	A		Assay of methemalbumin					
83858	A		Assay of methsuximide					
83864	A		Mucopolysaccharides					
83866	A		Mucopolysaccharides screen					
83872	A		Assay synovial fluid mucin					
83873	A		Assay of csf protein					
83874	A		Assay of myoglobin					
83880	A		Natriuretic peptide					
83883	A		Assay, nephelometry not spec					
83885	A		Assay of nickel					
83887	A		Assay of nicotine					
83890	A		Molecule isolate					
83891	A		Molecule isolate nucleic					
83892	A		Molecular diagnostics					
83893	A		Molecule dot/slot/blot					
83894	A		Molecule gel electrophor					
83896	A		Molecular diagnostics					
83897	A		Molecule nucleic transfer					
83898	A		Molecule nucleic ampli					
83901	A		Molecule nucleic ampli					
83902	A		Molecular diagnostics					
83903	A		Molecule mutation scan					
83904	A		Molecule mutation identify					
83905	A		Molecule mutation identify					
83906	A		Molecule mutation identify					
83912	A		Genetic examination					
83915	A		Assay of nucleotidase					
83916	A		Oligoclonal bands					
83918	A		Organic acids, total, quant					
83919	A		Organic acids, qual, each					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83921	A		Organic acid, single, quant					
83925	A		Assay of opiates					
83930	A		Assay of blood osmolality					
83935	A		Assay of urine osmolality					
83937	A		Assay of osteocalcin					
83945	A		Assay of oxalate					
83950	A		Oncoprotein, her-2/neu					
83970	A		Assay of parathormone					
83986	A		Assay of body fluid acidity					
83992	A		Assay for phencyclidine					
84022	A		Assay of phenothiazine					
84030	A		Assay of blood pku					
84035	A		Assay of phenylketones					
84060	A		Assay acid phosphatase					
84061	A		Phosphatase, forensic exam					
84066	A		Assay prostate phosphatase					
84075	A		Assay alkaline phosphatase					
84078	A		Assay alkaline phosphatase					
84080	A		Assay alkaline phosphatases					
84081	A		Amniotic fluid enzyme test					
84085	A		Assay of rbc pg6d enzyme					
84087	A		Assay phosphohexose enzymes					
84100	A		Assay of phosphorus					
84105	A		Assay of urine phosphorus					
84106	A		Test for porphobilinogen					
84110	A		Assay of porphobilinogen					
84119	A		Test urine for porphyrins					
84120	A		Assay of urine porphyrins					
84126	A		Assay of feces porphyrins					
84127	A		Assay of feces porphyrins					
84132	A		Assay of serum potassium					
84133	A		Assay of urine potassium					
84134	A		Assay of prealbumin					
84135	A		Assay of pregnanediol					
84138	A		Assay of pregnanetriol					
84140	A		Assay of pregnenolone					
84143	A		Assay of 17-hydroxypregneno					
84144	A		Assay of progesterone					
84146	A		Assay of prolactin					
84150	A		Assay of prostaglandin					
84152	A		Assay of psa, complexed					
84153	A		Assay of psa, total					
84154	A		Assay of psa, free					
84155	A		Assay of protein, serum					
84156	A		Assay of protein, urine					
84157	A		Assay of protein, other					
84160	A		Assay of protein, any source					
84163	A		Pappa, serum					
84165	A		Electrophoreisis of proteins					
84166	A		Protein e-phoresis/urine/csf					
84181	A		Western blot test					
84182	A		Protein, western blot test					
84202	A		Assay RBC protoporphyrin					
84203	A		Test RBC protoporphyrin					
84206	A		Assay of proinsulin					
84207	A		Assay of vitamin b-6					
84210	A		Assay of pyruvate					
84220	A		Assay of pyruvate kinase					
84228	A		Assay of quinine					
84233	A		Assay of estrogen					
84234	A		Assay of progesterone					
84235	A		Assay of endocrine hormone					
84238	A		Assay, nonendocrine receptor					
84244	A		Assay of renin					
84252	A		Assay of vitamin b-2					
84255	A		Assay of selenium					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
84260	A		Assay of serotonin					
84270	A		Assay of sex hormone globul					
84275	A		Assay of sialic acid					
84285	A		Assay of silica					
84295	A		Assay of serum sodium					
84300	A		Assay of urine sodium					
84302	A		Assay of sweat sodium					
84305	A		Assay of somatomedin					
84307	A		Assay of somatostatin					
84311	A		Spectrophotometry					
84315	A		Body fluid specific gravity					
84375	A		Chromatogram assay, sugars					
84376	A		Sugars, single, qual					
84377	A		Sugars, multiple, qual					
84378	A		Sugars, single, quant					
84379	A		Sugars multiple quant					
84392	A		Assay of urine sulfate					
84402	A		Assay of testosterone					
84403	A		Assay of total testosterone					
84425	A		Assay of vitamin b-1					
84430	A		Assay of thiocyanate					
84432	A		Assay of thyroglobulin					
84436	A		Assay of total thyroxine					
84437	A		Assay of neonatal thyroxine					
84439	A		Assay of free thyroxine					
84442	A		Assay of thyroid activity					
84443	A		Assay thyroid stim hormone					
84445	A		Assay of tsi					
84446	A		Assay of vitamin e					
84449	A		Assay of transcortin					
84450	A		Transferase (AST) (SGOT)					
84460	A		Alanine amino (ALT) (SGPT)					
84466	A		Assay of transferrin					
84478	A		Assay of triglycerides					
84479	A		Assay of thyroid (t3 or t4)					
84480	A		Assay, triiodothyronine (t3)					
84481	A		Free assay (FT-3)					
84482	A		T3 reverse					
84484	A		Assay of troponin, quant					
84485	A		Assay duodenal fluid trypsin					
84488	A		Test feces for trypsin					
84490	A		Assay of feces for trypsin					
84510	A		Assay of tyrosine					
84512	A		Assay of troponin, qual					
84520	A		Assay of urea nitrogen					
84525	A		Urea nitrogen semi-quant					
84540	A		Assay of urine/urea-n					
84545	A		Urea-N clearance test					
84550	A		Assay of blood/uric acid					
84560	A		Assay of urine/uric acid					
84577	A		Assay of feces/urobilinogen					
84578	A		Test urine urobilinogen					
84580	A		Assay of urine urobilinogen					
84583	A		Assay of urine urobilinogen					
84585	A		Assay of urine vma					
84586	A		Assay of vip					
84588	A		Assay of vasopressin					
84590	A		Assay of vitamin a					
84591	A		Assay of nos vitamin					
84597	A		Assay of vitamin k					
84600	A		Assay of volatiles					
84620	A		Xylose tolerance test					
84630	A		Assay of zinc					
84681	A		Assay of c-peptide					
84702	A		Chorionic gonadotropin test					
84703	A		Chorionic gonadotropin assay					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
84830	A		Ovulation tests					
84999	A		Clinical chemistry test					
85002	A		Bleeding time test					
85004	A		Automated diff wbc count					
85007	A		Differential WBC count					
85008	A		Nondifferential WBC count					
85009	A		Differential WBC count					
85013	A		Spun microhematocrit					
85014	A		Hematocrit					
85018	A		Hemoglobin					
85025	A		Automated hemogram					
85027	A		Automated hemogram					
85032	A		Manual cell count, each					
85041	A		Red blood cell (RBC) count					
85044	A		Reticulocyte count					
85045	A		Reticulocyte count					
85046	A		Reticyte/hgb concentrate					
85048	A		White blood cell (WBC) count					
85049	A		Automated platelet count					
85055	A		Reticulated platelet assay					
85060	B		Blood smear interpretation					
85097	X		Bone marrow interpretation	0343	0.4786	$28.40	$11.10	$5.68
85130	A		Chromogenic substrate assay					
85170	A		Blood clot retraction					
85175	A		Blood clot lysis time					
85210	A		Blood clot factor II test					
85220	A		Blood clot factor V test					
85230	A		Blood clot factor VII test					
85240	A		Blood clot factor VIII test					
85244	A		Blood clot factor VIII test					
85245	A		Blood clot factor VIII test					
85246	A		Blood clot factor VIII test					
85247	A		Blood clot factor VIII test					
85250	A		Blood clot factor IX test					
85260	A		Blood clot factor X test					
85270	A		Blood clot factor XI test					
85280	A		Blood clot factor XII test					
85290	A		Blood clot factor XIII test					
85291	A		Blood clot factor XIII test					
85292	A		Blood clot factor assay					
85293	A		Blood clot factor assay					
85300	A		Antithrombin III test					
85301	A		Antithrombin III test					
85302	A		Blood clot inhibitor antigen					
85303	A		Blood clot inhibitor test					
85305	A		Blood clot inhibitor assay					
85306	A		Blood clot inhibitor test					
85307	A		Assay activated protein c					
85335	A		Factor inhibitor test					
85337	A		Thrombomodulin					
85345	A		Coagulation time					
85347	A		Coagulation time					
85348	A		Coagulation time					
85360	A		Euglobulin lysis					
85362	A		Fibrin degradation products					
85366	A		Fibrinogen test					
85370	A		Fibrinogen test					
85378	A		Fibrin degradation					
85379	A		Fibrin degradation, quant					
85380	A		Fibrin degradation, vte					
85384	A		Fibrinogen					
85385	A		Fibrinogen					
85390	A		Fibrinolysins screen					
85396	N		Clotting assay, whole blood					
85400	A		Fibrinolytic plasmin					
85410	A		Fibrinolytic antiplasmin					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
85415	A		Fibrinolytic plasminogen					
85420	A		Fibrinolytic plasminogen					
85421	A		Fibrinolytic plasminogen					
85441	A		Heinz bodies, direct					
85445	A		Heinz bodies, induced					
85460	A		Hemoglobin, fetal					
85461	A		Hemoglobin, fetal					
85475	A		Hemolysin					
85520	A		Heparin assay					
85525	A		Heparin neutralization					
85530	A		Heparin-protamine tolerance					
85536	A		Iron stain peripheral blood					
85540	A		Wbc alkaline phosphatase					
85547	A		RBC mechanical fragility					
85549	A		Muramidase					
85555	A		RBC osmotic fragility					
85557	A		RBC osmotic fragility					
85576	A		Blood platelet aggregation					
85597	A		Platelet neutralization					
85610	A		Prothrombin time					
85611	A		Prothrombin test					
85612	A		Viper venom prothrombin time					
85613	A		Russell viper venom, diluted					
85635	A		Reptilase test					
85651	A		Rbc sed rate, nonautomated					
85652	A		Rbc sed rate, automated					
85660	A		RBC sickle cell test					
85670	A		Thrombin time, plasma					
85675	A		Thrombin time, titer					
85705	A		Thromboplastin inhibition					
85730	A		Thromboplastin time, partial					
85732	A		Thromboplastin time, partial					
85810	A		Blood viscosity examination					
85999	A		Hematology procedure					
86000	A		Agglutinins, febrile					
86001	A		Allergen specific igg					
86003	A		Allergen specific IgE					
86005	A		Allergen specific IgE					
86021	A		WBC antibody identification					
86022	A		Platelet antibodies					
86023	A		Immunoglobulin assay					
86038	A		Antinuclear antibodies					
86039	A		Antinuclear antibodies (ANA)					
86060	A		Antistreptolysin o, titer					
86063	A		Antistreptolysin o, screen					
86064	A		B cells, total count					
86077	X		Physician blood bank service	0433	0.2581	$15.32	$6.12	$3.06
86078	X		Physician blood bank service	0343	0.4786	$28.40	$11.10	$5.68
86079	X		Physician blood bank service	0433	0.2581	$15.32	$6.12	$3.06
86140	A		C-reactive protein					
86141	A		C-reactive protein, hs					
86146	A		Glycoprotein antibody					
86147	A		Cardiolipin antibody					
86148	A		Phospholipid antibody					
86155	A		Chemotaxis assay					
86156	A		Cold agglutinin, screen					
86157	A		Cold agglutinin, titer					
86160	A		Complement, antigen					
86161	A		Complement/function activity					
86162	A		Complement, total (CH50)					
86171	A		Complement fixation, each					
86185	A		Counterimmunoelectrophoresis					
86215	A		Deoxyribonuclease, antibody					
86225	A		DNA antibody					
86226	A		DNA antibody, single strand					
86235	A		Nuclear antigen antibody					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86243	A		Fc receptor					
86255	A		Fluorescent antibody, screen					
86256	A		Fluorescent antibody, titer					
86277	A		Growth hormone antibody					
86280	A		Hemagglutination inhibition					
86294	A		Immunoassay, tumor, qual					
86300	A		Immunoassay, tumor, ca 15-3					
86301	A		Immunoassay, tumor, ca 19-9					
86304	A		Immunoassay, tumor, ca 125					
86308	A		Heterophile antibodies					
86309	A		Heterophile antibodies					
86310	A		Heterophile antibodies					
86316	A		Immunoassay, tumor other					
86317	A		Immunoassay,infectious agent					
86318	A		Immunoassay,infectious agent					
86320	A		Serum immunoelectrophoresis					
86325	A		Other immunoelectrophoresis					
86327	A		Immunoelectrophoresis assay					
86329	A		Immunodiffusion					
86331	A		Immunodiffusion ouchterlony					
86332	A		Immune complex assay					
86334	A		Immunofixation procedure					
86335	A		Immunfix e-phorsis/urine/csf					
86336	A		Inhibin A					
86337	A		Insulin antibodies					
86340	A		Intrinsic factor antibody					
86341	A		Islet cell antibody					
86343	A		Leukocyte histamine release					
86344	A		Leukocyte phagocytosis					
86353	A		Lymphocyte transformation					
86359	A		T cells, total count					
86360	A		T cell, absolute count/ratio					
86361	A		T cell, absolute count					
86376	A		Microsomal antibody					
86378	A		Migration inhibitory factor					
86379	A		Nk cells, total count					
86382	A		Neutralization test, viral					
86384	A		nitroblue tetrazolium dye					
86403	A		Particle agglutination test					
86406	A		Particle agglutination test					
86430	A		Rheumatoid factor test					
86431	A		Rheumatoid factor, quant					
86485	X		Skin test, candida	0341	0.1112	$6.60	$2.62	$1.32
86490	X		Coccidioidomycosis skin test	0341	0.1112	$6.60	$2.62	$1.32
86510	X		Histoplasmosis skin test	0341	0.1112	$6.60	$2.62	$1.32
86580	X		TB intradermal test	0341	0.1112	$6.60	$2.62	$1.32
86585	X		TB tine test	0341	0.1112	$6.60	$2.62	$1.32
86586	X		Skin test, unlisted	0341	0.1112	$6.60	$2.62	$1.32
86587	A		Stem cells, total count					
86590	A		Streptokinase, antibody					
86592	A		Blood serology, qualitative					
86593	A		Blood serology, quantitative					
86602	A		Antinomyces antibody					
86603	A		Adenovirus antibody					
86606	A		Aspergillus antibody					
86609	A		Bacterium antibody					
86611	A		Bartonella antibody					
86612	A		Blastomyces antibody					
86615	A		Bordetella antibody					
86617	A		Lyme disease antibody					
86618	A		Lyme disease antibody					
86619	A		Borrelia antibody					
86622	A		Brucella antibody					
86625	A		Campylobacter antibody					
86628	A		Candida antibody					
86631	A		Chlamydia antibody					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86632	A		Chlamydia igm antibody					
86635	A		Coccidioides antibody					
86638	A		Q fever antibody					
86641	A		Cryptococcus antibody					
86644	A		CMV antibody					
86645	A		CMV antibody, IgM					
86648	A		Diphtheria antibody					
86651	A		Encephalitis antibody					
86652	A		Encephalitis antibody					
86653	A		Encephalitis antibody					
86654	A		Encephalitis antibody					
86658	A		Enterovirus antibody					
86663	A		Epstein-barr antibody					
86664	A		Epstein-barr antibody					
86665	A		Epstein-barr antibody					
86666	A		Ehrlichia antibody					
86668	A		Francisella tularensis					
86671	A		Fungus antibody					
86674	A		Giardia lamblia antibody					
86677	A		Helicobacter pylori					
86682	A		Helminth antibody					
86684	A		Hemophilus influenza					
86687	A		Htlv-i antibody					
86688	A		Htlv-ii antibody					
86689	A		HTLV/HIV confirmatory test					
86692	A		Hepatitis, delta agent					
86694	A		Herpes simplex test					
86695	A		Herpes simplex test					
86696	A		Herpes simplex type 2					
86698	A		Histoplasma					
86701	A		HIV-1					
86702	A		HIV-2					
86703	A		HIV-1/HIV-2, single assay					
86704	A		Hep b core antibody, total					
86705	A		Hep b core antibody, igm					
86706	A		Hep b surface antibody					
86707	A		Hep be antibody					
86708	A		Hep a antibody, total					
86709	A		Hep a antibody, igm					
86710	A		Influenza virus antibody					
86713	A		Legionella antibody					
86717	A		Leishmania antibody					
86720	A		Leptospira antibody					
86723	A		Listeria monocytogenes ab					
86727	A		Lymph choriomeningitis ab					
86729	A		Lympho venereum antibody					
86732	A		Mucormycosis antibody					
86735	A		Mumps antibody					
86738	A		Mycoplasma antibody					
86741	A		Neisseria meningitidis					
86744	A		Nocardia antibody					
86747	A		Parvovirus antibody					
86750	A		Malaria antibody					
86753	A		Protozoa antibody nos					
86756	A		Respiratory virus antibody					
86757	A		Rickettsia antibody					
86759	A		Rotavirus antibody					
86762	A		Rubella antibody					
86765	A		Rubeola antibody					
86768	A		Salmonella antibody					
86771	A		Shigella antibody					
86774	A		Tetanus antibody					
86777	A		Toxoplasma antibody					
86778	A		Toxoplasma antibody, igm					
86781	A		Treponema pallidum, confirm					
86784	A		Trichinella antibody					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86787	A		Varicella-zoster antibody					
86790	A		Virus antibody nos					
86793	A		Yersinia antibody					
86800	A		Thyroglobulin antibody					
86803	A		Hepatitis c ab test					
86804	A		Hep c ab test, confirm					
86805	A		Lymphocytotoxicity assay					
86806	A		Lymphocytotoxicity assay					
86807	A		Cytotoxic antibody screening					
86808	A		Cytotoxic antibody screening					
86812	A		HLA typing, A, B, or C					
86813	A		HLA typing, A, B, or C					
86816	A		HLA typing, DR/DQ					
86817	A		HLA typing, DR/DQ					
86821	A		Lymphocyte culture, mixed					
86822	A		Lymphocyte culture, primed					
86849	A		Immunology procedure					
86850	X		RBC antibody screen	0345	0.2277	$13.51	$3.01	$2.70
86860	X		RBC antibody elution	0346	0.3434	$20.38	$4.54	$4.08
86870	X		RBC antibody identification	0346	0.3434	$20.38	$4.54	$4.08
86880	X		Coombs test, direct	0409	0.1258	$7.47	$2.22	$1.49
86885	X		Coombs test, indirect, qual	0409	0.1258	$7.47	$2.22	$1.49
86886	X		Coombs test, indirect, titer	0409	0.1258	$7.47	$2.22	$1.49
86890	X		Autologous blood process	0347	0.8434	$50.05	$12.35	$10.01
86891	X		Autologous blood, op salvage	0346	0.3434	$20.38	$4.54	$4.08
86900	X		Blood typing, ABO	0409	0.1258	$7.47	$2.22	$1.49
86901	X		Blood typing, Rh (D)	0409	0.1258	$7.47	$2.22	$1.49
86903	X		Blood typing, antigen screen	0345	0.2277	$13.51	$3.01	$2.70
86904	X		Blood typing, patient serum	0346	0.3434	$20.38	$4.54	$4.08
86905	X		Blood typing, RBC antigens	0345	0.2277	$13.51	$3.01	$2.70
86906	X		Blood typing, Rh phenotype	0345	0.2277	$13.51	$3.01	$2.70
86910	E		Blood typing, paternity test					
86911	E		Blood typing, antigen system					
86920	X		Compatibility test	0346	0.3434	$20.38	$4.54	$4.08
86921	X		Compatibility test	0345	0.2277	$13.51	$3.01	$2.70
86922	X		Compatibility test	0346	0.3434	$20.38	$4.54	$4.08
86927	X		Plasma, fresh frozen	0345	0.2277	$13.51	$3.01	$2.70
86930	X		Frozen blood prep	0347	0.8434	$50.05	$12.35	$10.01
86931	X		Frozen blood thaw	0347	0.8434	$50.05	$12.35	$10.01
86932	X		Frozen blood freeze/thaw	0347	0.8434	$50.05	$12.35	$10.01
86940	A		Hemolysins/agglutinins, auto					
86941	A		Hemolysins/agglutinins					
86945	X		Blood product/irradiation	0345	0.2277	$13.51	$3.01	$2.70
86950	X		Leukacyte transfusion	0345	0.2277	$13.51	$3.01	$2.70
86965	X		Pooling blood platelets	0345	0.2277	$13.51	$3.01	$2.70
86970	X		RBC pretreatment	0345	0.2277	$13.51	$3.01	$2.70
86971	X		RBC pretreatment	0345	0.2277	$13.51	$3.01	$2.70
86972	X		RBC pretreatment	0346	0.3434	$20.38	$4.54	$4.08
86975	X		RBC pretreatment, serum	0345	0.2277	$13.51	$3.01	$2.70
86976	X		RBC pretreatment, serum	0345	0.2277	$13.51	$3.01	$2.70
86977	X		RBC pretreatment, serum	0345	0.2277	$13.51	$3.01	$2.70
86978	X		RBC pretreatment, serum	0345	0.2277	$13.51	$3.01	$2.70
86985	X		Split blood or products	0345	0.2277	$13.51	$3.01	$2.70
86999	X		Transfusion procedure	0345	0.2277	$13.51	$3.01	$2.70
87001	A		Small animal inoculation					
87003	A		Small animal inoculation					
87015	A		Specimen concentration					
87040	A		Blood culture for bacteria					
87045	A		Feces culture, bacteria					
87046	A		Stool cultr, bacteria, each					
87070	A		Culture, bacteria, other					
87071	A		Culture bacteri aerobic othr					
87073	A		Culture bacteria anaerobic					
87075	A		Cultr bacteria, except blood					
87076	A		Culture anaerobe ident, each					
87077	A		Culture aerobic identify					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87081	A		Culture screen only					
87084	A		Culture of specimen by kit					
87086	A		Urine culture/colony count					
87088	A		Urine bacteria culture					
87101	A		Skin fungi culture					
87102	A		Fungus isolation culture					
87103	A		Blood fungus culture					
87106	A		Fungi identification, yeast					
87107	A		Fungi identification, mold					
87109	A		Mycoplasma					
87110	A		Chlamydia culture					
87116	A		Mycobacteria culture					
87118	A		Mycobacteric identification					
87140	A		Culture type immunofluoresc					
87143	A		Culture typing, glc/hplc					
87147	A		Culture type, immunologic					
87149	A		Culture type, nucleic acid					
87152	A		Culture type pulse field gel					
87158	A		Culture typing, added method					
87164	A		Dark field examination					
87166	A		Dark field examination					
87168	A		Macroscopic exam arthropod					
87169	A		Macroscopic exam parasite					
87172	A		Pinworm exam					
87176	A		Tissue homogenization, cultr					
87177	A		Ova and parasites smears					
87181	A		Microbe susceptible, diffuse					
87184	A		Microbe susceptible, disk					
87185	A		Microbe susceptible, enzyme					
87186	A		Microbe susceptible, mic					
87187	A		Microbe susceptible, mlc					
87188	A		Microbe suscept, macrobroth					
87190	A		Microbe suscept, mycobacteri					
87197	A		Bactericidal level, serum					
87205	A		Smear, gram stain					
87206	A		Smear, fluorescent/acid stai					
87207	A		Smear, special stain					
87210	A		Smear, wet mount, saline/ink					
87220	A		Tissue exam for fungi					
87230	A		Assay, toxin or antitoxin					
87250	A		Virus inoculate, eggs/animal					
87252	A		Virus inoculation, tissue					
87253	A		Virus inoculate tissue, addl					
87254	A		Virus inoculation, shell via					
87255	A		Genet virus isolate, hsv					
87260	A		Adenovirus ag, if					
87265	A		Pertussis ag, if					
87267	A		Enterovirus antibody, dfa					
87269	A		Giardia ag, if					
87270	A		Chlamydia trachomatis ag, if					
87271	A		Cryptosporidum/gardia ag, if					
87272	A		Cryptosporidium ag, if					
87273	A		Herpes simplex 2, ag, if					
87274	A		Herpes simplex 1, ag, if					
87275	A		Influenza b, ag, if					
87276	A		Influenza a, ag, if					
87277	A		Legionella micdadei, ag, if					
87278	A		Legion pneumophilia ag, if					
87279	A		Parainfluenza, ag, if					
87280	A		Respiratory syncytial ag, if					
87281	A		Pneumocystis carinii, ag, if					
87283	A		Rubeola, ag, if					
87285	A		Treponema pallidum, ag, if					
87290	A		Varicella zoster, ag, if					
87299	A		Antibody detection, nos, if					
87300	A		Ag detection, polyval, if					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87301	A		Adenovirus ag, eia					
87320	A		Chylmd trach ag, eia					
87324	A		Clostridium ag, eia					
87327	A		Cryptococcus neoform ag, eia					
87328	A		Cryptosporidium ag, eia					
87329	A		Giardia ag, eia					
87332	A		Cytomegalovirus ag, eia					
87335	A		E coli 0157 ag, eia					
87336	A		Entamoeb hist dispr, ag, eia					
87337	A		Entamoeb hist group, ag, eia					
87338	A		Hpylori, stool, eia					
87339	A		H pylori ag, eia					
87340	A		Hepatitis b surface ag, eia					
87341	A		Hepatitis b surface, ag, eia					
87350	A		Hepatitis be ag, eia					
87380	A		Hepatitis delta ag, eia					
87385	A		Histoplasma capsul ag, eia					
87390	A		Hiv-1 ag, eia					
87391	A		Hiv-2 ag, eia					
87400	A		Influenza a/b, ag, eia					
87420	A		Resp syncytial ag, eia					
87425	A		Rotavirus ag, eia					
87427	A		Shiga-like toxin ag, eia					
87430	A		Strep a ag, eia					
87449	A		Ag detect nos, eia, mult					
87450	A		Ag detect nos, eia, single					
87451	A		Ag detect polyval, eia, mult					
87470	A		Bartonella, dna, dir probe					
87471	A		Bartonella, dna, amp probe					
87472	A		Bartonella, dna, quant					
87475	A		Lyme dis, dna, dir probe					
87476	A		Lyme dis, dna, amp probe					
87477	A		Lyme dis, dna, quant					
87480	A		Candida, dna, dir probe					
87481	A		Candida, dna, amp probe					
87482	A		Candida, dna, quant					
87485	A		Chylmd pneum, dna, dir probe					
87486	A		Chylmd pneum, dna, amp probe					
87487	A		Chylmd pneum, dna, quant					
87490	A		Chylmd trach, dna, dir probe					
87491	A		Chylmd trach, dna, amp probe					
87492	A		Chylmd trach, dna, quant					
87495	A		Cytomeg, dna, dir probe					
87496	A		Cytomeg, dna, amp probe					
87497	A		Cytomeg, dna, quant					
87510	A		Gardner vag, dna, dir probe					
87511	A		Gardner vag, dna, amp probe					
87512	A		Gardner vag, dna, quant					
87515	A		Hepatitis b, dna, dir probe					
87516	A		Hepatitis b, dna, amp probe					
87517	A		Hepatitis b, dna, quant					
87520	A		Hepatitis c, rna, dir probe					
87521	A		Hepatitis c, rna, amp probe					
87522	A		Hepatitis c, rna, quant					
87525	A		Hepatitis g, dna, dir probe					
87526	A		Hepatitis g, dna, amp probe					
87527	A		Hepatitis g, dna, quant					
87528	A		Hsv, dna, dir probe					
87529	A		Hsv, dna, amp probe					
87530	A		Hsv, dna, quant					
87531	A		Hhv-6, dna, dir probe					
87532	A		Hhv-6, dna, amp probe					
87533	A		Hhv-6, dna, quant					
87534	A		Hiv-1, dna, dir probe					
87535	A		Hiv-1, dna, amp probe					
87536	A		Hiv-1, dna, quant					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87537	A		Hiv-2, dna, dir probe					
87538	A		Hiv-2, dna, amp probe					
87539	A		Hiv-2, dna, quant					
87540	A		Legion pneumo, dna, dir prob					
87541	A		Legion pneumo, dna, amp prob					
87542	A		Legion pneumo, dna, quant					
87550	A		Mycobacteria, dna, dir probe					
87551	A		Mycobacteria, dna, amp probe					
87552	A		Mycobacteria, dna, quant					
87555	A		M.tuberculo, dna, dir probe					
87556	A		M.tuberculo, dna, amp probe					
87557	A		M.tuberculo, dna, quant					
87560	A		M.avium-intra, dna, dir prob					
87561	A		M.avium-intra, dna, amp prob					
87562	A		M.avium-intra, dna, quant					
87580	A		M.pneumon, dna, dir probe					
87581	A		M.pneumon, dna, amp probe					
87582	A		M.pneumon, dna, quant					
87590	A		N.gonorrhoeae, dna, dir prob					
87591	A		N.gonorrhoeae, dna, amp prob					
87592	A		N.gonorrhoeae, dna, quant					
87620	A		Hpv, dna, dir probe					
87621	A		Hpv, dna, amp probe					
87622	A		Hpv, dna, quant					
87650	A		Strep a, dna, dir probe					
87651	A		Strep a, dna, amp probe					
87652	A		Strep a, dna, quant					
87660	A		Trichomonas vagin, dir probe					
87797	A		Detect agent nos, dna, dir					
87798	A		Detect agent nos, dna, amp					
87799	A		Detect agent nos, dna, quant					
87800	A		Detect agnt mult, dna, direc					
87801	A		Detect agnt mult, dna, ampli					
87802	A		Strep b assay w/optic					
87803	A		Clostridium toxin a w/optic					
87804	A		Influenza assay w/optic					
87807	A		Rsv assay w/optic					
87810	A		Chylmd trach assay w/optic					
87850	A		N. gonorrhoeae assay w/optic					
87880	A		Strep a assay w/optic					
87899	A		Agent nos assay w/optic					
87901	A		Genotype, dna, hiv reverse t					
87902	A		Genotype, dna, hepatitis C					
87903	A		Phenotype, dna hiv w/culture					
87904	A		Phenotype, dna hiv w/clt add					
87999	A		Microbiology procedure					
88000	E		Autopsy (necropsy), gross					
88005	E		Autopsy (necropsy), gross					
88007	E		Autopsy (necropsy), gross					
88012	E		Autopsy (necropsy), gross					
88014	E		Autopsy (necropsy), gross					
88016	E		Autopsy (necropsy), gross					
88020	E		Autopsy (necropsy), complete					
88025	E		Autopsy (necropsy), complete					
88027	E		Autopsy (necropsy), complete					
88028	E		Autopsy (necropsy), complete					
88029	E		Autopsy (necropsy), complete					
88036	E		Limited autopsy					
88037	E		Limited autopsy					
88040	E		Forensic autopsy (necropsy)					
88045	E		Coroner's autopsy (necropsy)					
88099	E		Necropsy (autopsy) procedure					
88104	X		Cytopathology, fluids	0433	0.2581	$15.32	$6.12	$3.06
88106	X		Cytopathology, fluids	0433	0.2581	$15.32	$6.12	$3.06
88107	X		Cytopathology, fluids	0433	0.2581	$15.32	$6.12	$3.06
88108	X		Cytopath, concentrate tech	0433	0.2581	$15.32	$6.12	$3.06

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
88112	X		Cytopath, cell enhance tech	0343	0.4786	$28.40	$11.10	$5.68
88125	X		Forensic cytopathology	0342	0.156	$9.26	$3.70	$1.85
88130	A		Sex chromatin identification					
88140	A		Sex chromatin identification					
88141	N		Cytopath, c/v, interpret					
88142	A		Cytopath, c/v, thin layer					
88143	A		Cytopath c/v thin layer redo					
88147	A		Cytopath, c/v, automated					
88148	A		Cytopath, c/v, auto rescreen					
88150	A		Cytopath, c/v, manual					
88152	A		Cytopath, c/v, auto redo					
88153	A		Cytopath, c/v, redo					
88154	A		Cytopath, c/v, select					
88155	A		Cytopath, c/v, index add-on					
88160	X		Cytopath smear, other source	0433	0.2581	$15.32	$6.12	$3.06
88161	X		Cytopath smear, other source	0433	0.2581	$15.32	$6.12	$3.06
88162	X		Cytopath smear, other source	0433	0.2581	$15.32	$6.12	$3.06
88164	A		Cytopath tbs, c/v, manual					
88165	A		Cytopath tbs, c/v, redo					
88166	A		Cytopath tbs, c/v, auto redo					
88167	A		Cytopath tbs, c/v, select					
88172	X		Cytopathology eval of fna	0343	0.4786	$28.40	$11.10	$5.68
88173	X		Cytopath eval, fna, report	0343	0.4786	$28.40	$11.10	$5.68
88174	A		Cytopath, c/v auto, in fluid					
88175	A		Cytopath c/v auto fluid redo					
88182	X		Cell marker study	0344	0.7996	$47.45	$15.66	$9.49
88184	X		Flowcytometry/ tc, 1 marker	0344	0.7996	$47.45	$15.66	$9.49
88185	X		Flowcytometry/tc, add-on	0343	0.4786	$28.40	$11.10	$5.68
88187	X		Flowcytometry/read, 2-8	0433	0.2581	$15.32	$6.12	$3.06
88188	X		Flowcytometry/read, 9-15	0433	0.2581	$15.32	$6.12	$3.06
88189	X		Flowcytometry/read, 16 & >	0343	0.4786	$28.40	$11.10	$5.68
88199	A		Cytopathology procedure					
88230	A		Tissue culture, lymphocyte					
88233	A		Tissue culture, skin/biopsy					
88235	A		Tissue culture, placenta					
88237	A		Tissue culture, bone marrow					
88239	A		Tissue culture, tumor					
88240	A		Cell cryopreserve/storage					
88241	A		Frozen cell preparation					
88245	A		Chromosome analysis, 20-25					
88248	A		Chromosome analysis, 50-100					
88249	A		Chromosome analysis, 100					
88261	A		Chromosome analysis, 5					
88262	A		Chromosome analysis, 15-20					
88263	A		Chromosome analysis, 45					
88264	A		Chromosome analysis, 20-25					
88267	A		Chromosome analys, placenta					
88269	A		Chromosome analys, amniotic					
88271	A		Cytogenetics, dna probe					
88272	A		Cytogenetics, 3-5					
88273	A		Cytogenetics, 10-30					
88274	A		Cytogenetics, 25-99					
88275	A		Cytogenetics, 100-300					
88280	A		Chromosome karyotype study					
88283	A		Chromosome banding study					
88285	A		Chromosome count, additional					
88289	A		Chromosome study, additional					
88291	A		Cyto/molecular report					
88299	X		Cytogenetic study	0342	0.156	$9.26	$3.70	$1.85
88300	X		Surgical path, gross	0433	0.2581	$15.32	$6.12	$3.06
88302	X		Tissue exam by pathologist	0433	0.2581	$15.32	$6.12	$3.06
88304	X		Tissue exam by pathologist	0343	0.4786	$28.40	$11.10	$5.68
88305	X		Tissue exam by pathologist	0343	0.4786	$28.40	$11.10	$5.68
88307	X		Tissue exam by pathologist	0344	0.7996	$47.45	$15.66	$9.49
88309	X		Tissue exam by pathologist	0344	0.7996	$47.45	$15.66	$9.49
88311	X		Decalcify tissue	0342	0.156	$9.26	$3.70	$1.85

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
88312	X		Special stains	0433	0.2581	$15.32	$6.12	$3.06
88313	X		Special stains	0433	0.2581	$15.32	$6.12	$3.06
88314	X		Histochemical stain	0342	0.156	$9.26	$3.70	$1.85
88318	X		Chemical histochemistry	0433	0.2581	$15.32	$6.12	$3.06
88319	X		Enzyme histochemistry	0343	0.4786	$28.40	$11.10	$5.68
88321	X		Microslide consultation	0433	0.2581	$15.32	$6.12	$3.06
88323	X		Microslide consultation	0343	0.4786	$28.40	$11.10	$5.68
88325	X		Comprehensive review of data	0344	0.7996	$47.45	$15.66	$9.49
88329	X		Path consult introp	0433	0.2581	$15.32	$6.12	$3.06
88331	X		Path consult intraop, 1 bloc	0343	0.4786	$28.40	$11.10	$5.68
88332	X		Path consult intraop, add'l	0433	0.2581	$15.32	$6.12	$3.06
88342	X		Immunohistochemistry	0343	0.4786	$28.40	$11.10	$5.68
88346	X		Immunofluorescent study	0343	0.4786	$28.40	$11.10	$5.68
88347	X		Immunofluorescent study	0343	0.4786	$28.40	$11.10	$5.68
88348	X		Electron microscopy	0661	3.3775	$200.43	$80.17	$40.09
88349	X		Scanning electron microscopy	0661	3.3775	$200.43	$80.17	$40.09
88355	X		Analysis, skeletal muscle	0343	0.4786	$28.40	$11.10	$5.68
88356	X		Analysis, nerve	0344	0.7996	$47.45	$15.66	$9.49
88358	X		Analysis, tumor	0344	0.7996	$47.45	$15.66	$9.49
88360	X		Tumor immunohistochem/manual	0344	0.7996	$47.45	$15.66	$9.49
88361	X		Immunohistochemistry, tumor	0344	0.7996	$47.45	$15.66	$9.49
88362	X		Nerve teasing preparations	0344	0.7996	$47.45	$15.66	$9.49
88365	X		Tissue hybridization	0344	0.7996	$47.45	$15.66	$9.49
88367	X		Insitu hybridization, auto	0344	0.7996	$47.45	$15.66	$9.49
88368	X		Insitu hybridization, manual	0344	0.7996	$47.45	$15.66	$9.49
88371	A		Protein, western blot tissue					
88372	A		Protein analysis w/probe					
88380	A		Microdissection					
88399	A		Surgical pathology procedure					
88400	A		Bilirubin total transcut					
89050	A		Body fluid cell count					
89051	A		Body fluid cell count					
89055	A		Leukocyte assessment, fecal					
89060	A		Exam,synovial fluid crystals					
89100	X		Sample intestinal contents	0360	1.4739	$87.47	$34.98	$17.49
89105	X		Sample intestinal contents	0360	1.4739	$87.47	$34.98	$17.49
89125	A		Specimen fat stain					
89130	X		Sample stomach contents	0360	1.4739	$87.47	$34.98	$17.49
89132	X		Sample stomach contents	0360	1.4739	$87.47	$34.98	$17.49
89135	X		Sample stomach contents	0360	1.4739	$87.47	$34.98	$17.49
89136	X		Sample stomach contents	0360	1.4739	$87.47	$34.98	$17.49
89140	X		Sample stomach contents	0360	1.4739	$87.47	$34.98	$17.49
89141	X		Sample stomach contents	0360	1.4739	$87.47	$34.98	$17.49
89160	A		Exam feces for meat fibers					
89190	A		Nasal smear for eosinophils					
89220	X		Sputum specimen collection	0343	0.4786	$28.40	$11.10	$5.68
89225	A		Starch granules, feces					
89230	X		Collect sweat for test	0433	0.2581	$15.32	$6.12	$3.06
89235	A		Water load test					
89240	A		Pathology lab procedure					
89250	X		Cultr oocyte/embryo <4 days	0348	0.7927	$47.04		$9.41
89251	X		Cultr oocyte/embryo <4 days	0348	0.7927	$47.04		$9.41
89253	X		Embryo hatching	0348	0.7927	$47.04		$9.41
89254	X		Oocyte identification	0348	0.7927	$47.04		$9.41
89255	X		Prepare embryo for transfer	0348	0.7927	$47.04		$9.41
89257	X		Sperm identification	0348	0.7927	$47.04		$9.41
89258	X		Cryopreservation embryo(s)	0348	0.7927	$47.04		$9.41
89259	X		Cryopreservation, sperm	0348	0.7927	$47.04		$9.41
89260	X		Sperm isolation, simple	0348	0.7927	$47.04		$9.41
89261	X		Sperm isolation, complex	0348	0.7927	$47.04		$9.41
89264	X		Identify sperm tissue	0348	0.7927	$47.04		$9.41
89268	X		Insemination of oocytes	0348	0.7927	$47.04		$9.41
89272	X		Extended culture of oocytes	0348	0.7927	$47.04		$9.41
89280	X		Assist oocyte fertilization	0348	0.7927	$47.04		$9.41
89281	X		Assist oocyte fertilization	0348	0.7927	$47.04		$9.41
89290	X		Biopsy, oocyte polar body	0348	0.7927	$47.04		$9.41

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
89291	X		Biopsy, oocyte polar body	0348	0.7927	$47.04		$9.41
89300	A		Semen analysis w/huhner					
89310	A		Semen analysis					
89320	A		Semen analysis, complete					
89321	A		Semen analysis & motility					
89325	A		Sperm antibody test					
89329	A		Sperm evaluation test					
89330	A		Evaluation, cervical mucus					
89335	X		Cryopreserve testicular tiss	0348	0.7927	$47.04		$9.41
89342	X		Storage/year embryo(s)	0348	0.7927	$47.04		$9.41
89343	X		Storage/year sperm/semen	0348	0.7927	$47.04		$9.41
89344	X		Storage/year reprod tissue	0348	0.7927	$47.04		$9.41
89346	X		Storage/year oocyte	0348	0.7927	$47.04		$9.41
89352	X		Thawing cryopresrved embryo	0348	0.7927	$47.04		$9.41
89353	X		Thawing cryopresrved sperm	0348	0.7927	$47.04		$9.41
89354	X		Thaw cryoprsvrd reprod tiss	0348	0.7927	$47.04		$9.41
89356	X		Thawing cryopresrved oocyte	0348	0.7927	$47.04		$9.41
90281	E		Human ig, im					
90283	E		Human ig, iv					
90287	E		Botulinum antitoxin					
90288	E		Botulism ig, iv					
90291	E		Cmv ig, iv					
90296	N		Diphtheria antitoxin					
90371	E		Hep b ig, im					
90375	K		Rabies ig, im/sc	9133		$64.56		$12.91
90376	K		Rabies ig, heat treated	9134		$69.79		$13.96
90378	E		Rsv ig, im, 50mg					
90379	E		Rsv ig, iv					
90384	E		Rh ig, full-dose, im					
90385	N		Rh ig, minidose, im					
90386	E		Rh ig, iv					
90389	E		Tetanus ig, im					
90393	N		Vaccina ig, im					
90396	K		Varicella-zoster ig, im	9135		$96.58		$19.32
90399	E		Immune globulin					
90465	B		Immune admin 1 inj, < 8 yrs					
90466	B		Immune admin addl inj, < 8 y					
90467	B		Immune admin o or n, < 8 yrs					
90468	B		Immune admin o/n, addl < 8 y					
90471	X		Immunization admin	0353	0.3954	$23.46		$4.69
90472	X		Immunization admin, each add	0353	0.3954	$23.46		$4.69
90473	S		Immune admin oral/nasal	1491		$5.00		$1.00
90474	S		Immune admin oral/nasal addl	1491		$5.00		$1.00
90476	K		Adenovirus vaccine, type 4	9136	0.9499	$56.37		$11.27
90477	N		Adenovirus vaccine, type 7					
90581	K		Anthrax vaccine, sc	9169		$128.95		$25.79
90585	K		Bcg vaccine, percut	9137		$124.54		$24.91
90586	B		Bcg vaccine, intravesical					
90632	N		Hep a vaccine, adult im					
90633	N		Hep a vacc, ped/adol, 2 dose					
90634	N		Hep a vacc, ped/adol, 3 dose					
90636	K		Hep a/hep b vacc, adult im	9138	0.9674	$57.41		$11.48
90645	N		Hib vaccine, hboc, im					
90646	N		Hib vaccine, prp-d, im					
90647	N		Hib vaccine, prp-omp, im					
90648	N		Hib vaccine, prp-t, im					
90655	L		Flu vaccine, 6-35 mo, im					
90656	L		Flu vaccine no preserv 3 & >					
90657	L		Flu vaccine, 6-35 mo, im					
90658	L		Flu vaccine, 3 yrs, im					
90660	E		Flu vaccine, nasal					
90665	N		Lyme disease vaccine, im					
90669	E		Pneumococcal vacc, ped <5					
90675	K		Rabies vaccine, im	9139		$128.04		$25.61
90676	K		Rabies vaccine, id	9140	1.4959	$88.77		$17.75
90680	N		Rotovirus vaccine, oral					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
90690	N		Typhoid vaccine, oral					
90691	N		Typhoid vaccine, im					
90692	N		Typhoid vaccine, h-p, sc/id					
90693	N		Typhoid vaccine, akd, sc					
90698	N		Dtap-hib-ip vaccine, im					
90700	N		Dtap vaccine, im					
90701	N		Dtp vaccine, im					
90702	N		Dt vaccine < 7, im					
90703	N		Tetanus vaccine, im					
90704	N		Mumps vaccine, sc					
90705	N		Measles vaccine, sc					
90706	N		Rubella vaccine, sc					
90707	N		Mmr vaccine, sc					
90708	K		Measles-rubella vaccine, sc	9141	0.9467	$56.18		$11.24
90710	N		Mmrv vaccine, sc					
90712	N		Oral poliovirus vaccine					
90713	N		Poliovirus, ipv, sc					
90715	N		Tdap vaccine >7 im					
90716	K		Chicken pox vaccine, sc	9142		$64.29		$12.86
90717	N		Yellow fever vaccine, sc					
90718	N		Td vaccine > 7, im					
90719	N		Diphtheria vaccine, im					
90720	N		Dtp/hib vaccine, im					
90721	N		Dtap/hib vaccine, im					
90723	E		Dtap-hep b-ipv vaccine, im					
90725	N		Cholera vaccine, injectable					
90727	N		Plague vaccine, im					
90732	L		Pneumococcal vaccine					
90733	K		Meningococcal vaccine, sc	9143		$56.75		$11.35
90734	K		Meningococcal vaccine, im	9145	0.8948	$53.10		$10.62
90735	K		Encephalitis vaccine, sc	9144		$67.73		$13.55
90740	F		Hepb vacc, ill pat 3 dose im					
90743	F		Hep b vacc, adol, 2 dose, im					
90744	F		Hepb vacc ped/adol 3 dose im					
90746	F		Hep b vaccine, adult, im					
90747	F		Hepb vacc, ill pat 4 dose im					
90748	E		Hep b/hib vaccine, im					
90749	N		Vaccine toxoid					
90780	S		IV infusion therapy, 1 hour	0120	2.0193	$119.83	$28.21	$23.97
90781	N		IV infusion, additional hour					
90782	X		Injection, sc/im	0353	0.3954	$23.46		$4.69
90783	X		Injection, ia	0359	0.8312	$49.33		$9.87
90784	X		Injection, iv	0359	0.8312	$49.33		$9.87
90788	X		Injection of antibiotic	0359	0.8312	$49.33		$9.87
90799	X		Ther/prophylactic/dx inject	0352	0.1413	$8.39		$1.68
90801	S		Psy dx interview	0323	1.6227	$96.30	$20.08	$19.26
90802	S		Intac psy dx interview	0323	1.6227	$96.30	$20.08	$19.26
90804	S		Psytx, office, 20-30 min	0322	1.2319	$73.10		$14.62
90805	S		Psytx, off, 20-30 min w/e&m	0322	1.2319	$73.10		$14.62
90806	S		Psytx, off, 45-50 min	0323	1.6227	$96.30	$20.08	$19.26
90807	S		Psytx, off, 45-50 min w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90808	S		Psytx, office, 75-80 min	0323	1.6227	$96.30	$20.08	$19.26
90809	S		Psytx, off, 75-80, w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90810	S		Intac psytx, off, 20-30 min	0322	1.2319	$73.10		$14.62
90811	S		Intac psytx, 20-30, w/e&m	0322	1.2319	$73.10		$14.62
90812	S		Intac psytx, off, 45-50 min	0323	1.6227	$96.30	$20.08	$19.26
90813	S		Intac psytx, 45-50 min w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90814	S		Intac psytx, off, 75-80 min	0323	1.6227	$96.30	$20.08	$19.26
90815	S		Intac psytx, 75-80 w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90816	S		Psytx, hosp, 20-30 min	0322	1.2319	$73.10		$14.62
90817	S		Psytx, hosp, 20-30 min w/e&m	0322	1.2319	$73.10		$14.62
90818	S		Psytx, hosp, 45-50 min	0323	1.6227	$96.30	$20.08	$19.26
90819	S		Psytx, hosp, 45-50 min w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90821	S		Psytx, hosp, 75-80 min	0323	1.6227	$96.30	$20.08	$19.26
90822	S		Psytx, hosp, 75-80 min w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90823	S		Intac psytx, hosp, 20-30 min	0322	1.2319	$73.10		$14.62

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
90824	S		Intac psytx, hsp 20-30 w/e&m	0322	1.2319	$73.10		$14.62
90826	S		Intac psytx, hosp, 45-50 min	0323	1.6227	$96.30	$20.08	$19.26
90827	S		Intac psytx, hsp 45-50 w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90828	S		Intac psytx, hosp, 75-80 min	0323	1.6227	$96.30	$20.08	$19.26
90829	S		Intac psytx, hsp 75-80 w/e&m	0323	1.6227	$96.30	$20.08	$19.26
90845	S		Psychoanalysis	0323	1.6227	$96.30	$20.08	$19.26
90846	S		Family psytx w/o patient	0324	2.0997	$124.60		$24.92
90847	S		Family psytx w/patient	0324	2.0997	$124.60		$24.92
90849	S		Multiple family group psytx	0325	1.3189	$78.27	$17.10	$15.65
90853	S		Group psychotherapy	0325	1.3189	$78.27	$17.10	$15.65
90857	S		Intac group psytx	0325	1.3189	$78.27	$17.10	$15.65
90862	X		Medication management	0374	1.0414	$61.80		$12.36
90865	S		Narcosynthesis	0323	1.6227	$96.30	$20.08	$19.26
90870	S		Electroconvulsive therapy	0320	5.3765	$319.06	$80.06	$63.81
90871	E		Electroconvulsive therapy					
90875	E		Psychophysiological therapy					
90876	E		Psychophysiological therapy					
90880	S		Hypnotherapy	0323	1.6227	$96.30	$20.08	$19.26
90882	E		Environmental manipulation					
90885	N		Psy evaluation of records					
90887	N		Consultation with family					
90889	N		Preparation of report					
90899	S		Psychiatric service/therapy	0322	1.2319	$73.10		$14.62
90901	A		Biofeedback train, any meth					
90911	S		Biofeedback peri/uro/rectal	0321	1.3579	$80.58	$21.71	$16.12
90918	E		ESRD related services, month					
90919	E		ESRD related services, month					
90920	E		ESRD related services, month					
90921	E		ESRD related services, month					
90922	E		ESRD related services, day					
90923	E		Esrd related services, day					
90924	E		Esrd related services, day					
90925	E		Esrd related services, day					
90935	S		Hemodialysis, one evaluation	0170	5.8994	$350.09		$70.02
90937	E		Hemodialysis, repeated eval					
90939	N		Hemodialysis study, transcut					
90940	N		Hemodialysis access study					
90945	S		Dialysis, one evaluation	0170	5.8994	$350.09		$70.02
90947	E		Dialysis, repeated eval					
90989	B		Dialysis training, complete					
90993	B		Dialysis training, incompl					
90997	E		Hemoperfusion					
90999	B		Dialysis procedure					
91000	X		Esophageal intubation	0361	3.6216	$214.92	$83.23	$42.98
91010	X		Esophagus motility study	0361	3.6216	$214.92	$83.23	$42.98
91011	X		Esophagus motility study	0361	3.6216	$214.92	$83.23	$42.98
91012	X		Esophagus motility study	0361	3.6216	$214.92	$83.23	$42.98
91020	X		Gastric motility	0361	3.6216	$214.92	$83.23	$42.98
91030	X		Acid perfusion of esophagus	0361	3.6216	$214.92	$83.23	$42.98
91034	X		Gastroesophageal reflux test	0361	3.6216	$214.92	$83.23	$42.98
91035	S		G-esoph reflx tst w/electrod	1506		$450.00		$90.00
91037	X		Esoph imped function test	0361	3.6216	$214.92	$83.23	$42.98
91038	X		Esoph imped funct test > 1h	0361	3.6216	$214.92	$83.23	$42.98
91040	X		Esoph balloon distension tst	0360	1.4739	$87.47	$34.98	$17.49
91052	X		Gastric analysis test	0361	3.6216	$214.92	$83.23	$42.98
91055	X		Gastric intubation for smear	0360	1.4739	$87.47	$34.98	$17.49
91060	X		Gastric saline load test	0360	1.4739	$87.47	$34.98	$17.49
91065	X		Breath hydrogen test	0360	1.4739	$87.47	$34.98	$17.49
91100	X		Pass intestine bleeding tube	0360	1.4739	$87.47	$34.98	$17.49
91105	X		Gastric intubation treatment	0360	1.4739	$87.47	$34.98	$17.49
91110	T		Gi tract capsule endoscopy	0142	9.3487	$554.78	$152.78	$110.96
91120	T		Rectal sensation test	0156	2.5751	$152.81	$40.52	$30.56
91122	T		Anal pressure record	0156	2.5751	$152.81	$40.52	$30.56
91123	N		Irrigate fecal impaction					
91132	X		Electrogastrography	0360	1.4739	$87.47	$34.98	$17.49
91133	X		Electrogastrography w/test	0360	1.4739	$87.47	$34.98	$17.49

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
91299	X		Gastroenterology procedure	0360	1.4739	$87.47	$34.98	$17.49
92002	V		Eye exam, new patient	0601	1.0038	$59.57		$11.91
92004	V		Eye exam, new patient	0601	1.0038	$59.57		$11.91
92012	V		Eye exam established pat	0600	0.8688	$51.56		$10.31
92014	V		Eye exam & treatment	0601	1.0038	$59.57		$11.91
92015	E		Refraction					
92018	T		New eye exam & treatment	0699	10.0177	$594.48		$118.90
92019	T		Eye exam & treatment	0699	10.0177	$594.48		$118.90
92020	S		Special eye evaluation	0230	0.7858	$46.63	$14.97	$9.33
92060	S		Special eye evaluation	0230	0.7858	$46.63	$14.97	$9.33
92065	S		Orthoptic/pleoptic training	0698	1.2438	$73.81	$16.55	$14.76
92070	N		Fitting of contact lens					
92081	S		Visual field examination(s)	0230	0.7858	$46.63	$14.97	$9.33
92082	S		Visual field examination(s)	0230	0.7858	$46.63	$14.97	$9.33
92083	S		Visual field examination(s)	0230	0.7858	$46.63	$14.97	$9.33
92100	N		Serial tonometry exam(s)					
92120	S		Tonography & eye evaluation	0230	0.7858	$46.63	$14.97	$9.33
92130	S		Water provocation tonography	0230	0.7858	$46.63	$14.97	$9.33
92135	S		Opthalmic dx imaging	0230	0.7858	$46.63	$14.97	$9.33
92136	S		Ophthalmic biometry	0698	1.2438	$73.81	$16.55	$14.76
92140	S		Glaucoma provocative tests	0698	1.2438	$73.81	$16.55	$14.76
92225	S		Special eye exam, initial	0230	0.7858	$46.63	$14.97	$9.33
92226	S		Special eye exam, subsequent	0230	0.7858	$46.63	$14.97	$9.33
92230	T		Eye exam with photos	0699	10.0177	$594.48		$118.90
92235	S		Eye exam with photos	0231	1.9278	$114.40	$44.61	$22.88
92240	S		Icg angiography	0231	1.9278	$114.40	$44.61	$22.88
92250	S		Eye exam with photos	0230	0.7858	$46.63	$14.97	$9.33
92260	S		Ophthalmoscopy/dynamometry	0698	1.2438	$73.81	$16.55	$14.76
92265	S		Eye muscle evaluation	0230	0.7858	$46.63	$14.97	$9.33
92270	S		Electro-oculography	0230	0.7858	$46.63	$14.97	$9.33
92275	S		Electroretinography	0231	1.9278	$114.40	$44.61	$22.88
92283	S		Color vision examination	0230	0.7858	$46.63	$14.97	$9.33
92284	S		Dark adaptation eye exam	0698	1.2438	$73.81	$16.55	$14.76
92285	S		Eye photography	0230	0.7858	$46.63	$14.97	$9.33
92286	S		Internal eye photography	0698	1.2438	$73.81	$16.55	$14.76
92287	S		Internal eye photography	0698	1.2438	$73.81	$16.55	$14.76
92310	E		Contact lens fitting					
92311	X		Contact lens fitting	0362	2.6607	$157.89		$31.58
92312	X		Contact lens fitting	0362	2.6607	$157.89		$31.58
92313	X		Contact lens fitting	0362	2.6607	$157.89		$31.58
92314	E		Prescription of contact lens					
92315	X		Prescription of contact lens	0362	2.6607	$157.89		$31.58
92316	X		Prescription of contact lens	0362	2.6607	$157.89		$31.58
92317	X		Prescription of contact lens	0362	2.6607	$157.89		$31.58
92325	X		Modification of contact lens	0362	2.6607	$157.89		$31.58
92326	X		Replacement of contact lens	0362	2.6607	$157.89		$31.58
92330	S		Fitting of artificial eye	0230	0.7858	$46.63	$14.97	$9.33
92335	N		Fitting of artificial eye					
92340	E		Fitting of spectacles					
92341	E		Fitting of spectacles					
92342	E		Fitting of spectacles					
92352	X		Special spectacles fitting	0362	2.6607	$157.89		$31.58
92353	X		Special spectacles fitting	0362	2.6607	$157.89		$31.58
92354	X		Special spectacles fitting	0362	2.6607	$157.89		$31.58
92355	X		Special spectacles fitting	0362	2.6607	$157.89		$31.58
92358	X		Eye prosthesis service	0362	2.6607	$157.89		$31.58
92370	E		Repair & adjust spectacles					
92371	X		Repair & adjust spectacles	0362	2.6607	$157.89		$31.58
92390	E		Supply of spectacles					
92391	E		Supply of contact lenses					
92392	E		Supply of low vision aids					
92393	E		Supply of artificial eye					
92395	E		Supply of spectacles					
92396	E		Supply of contact lenses					
92499	S		Eye service or procedure	0230	0.7858	$46.63	$14.97	$9.33
92502	T		Ear and throat examination	0251	2.0101	$119.29		$23.86

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
92504	N		Ear microscopy examination					
92506	A		Speech/hearing evaluation					
92507	A		Speech/hearing therapy					
92508	A		Speech/hearing therapy					
92510	E		Rehab for ear implant					
92511	T		Nasopharyngoscopy	0071	0.7915	$46.97	$11.31	$9.39
92512	X		Nasal function studies	0363	0.9128	$54.17	$17.44	$10.83
92516	X		Facial nerve function test	0660	1.6419	$97.44	$30.66	$19.49
92520	X		Laryngeal function studies	0660	1.6419	$97.44	$30.66	$19.49
92526	A		Oral function therapy					
92531	N		Spontaneous nystagmus study					
92532	N		Positional nystagmus test					
92533	N		Caloric vestibular test					
92534	N		Optokinetic nystagmus test					
92541	X		Spontaneous nystagmus test	0363	0.9128	$54.17	$17.44	$10.83
92542	X		Positional nystagmus test	0363	0.9128	$54.17	$17.44	$10.83
92543	X		Caloric vestibular test	0660	1.6419	$97.44	$30.66	$19.49
92544	X		Optokinetic nystagmus test	0363	0.9128	$54.17	$17.44	$10.83
92545	X		Oscillating tracking test	0363	0.9128	$54.17	$17.44	$10.83
92546	X		Sinusoidal rotational test	0660	1.6419	$97.44	$30.66	$19.49
92547	X		Supplemental electrical test	0363	0.9128	$54.17	$17.44	$10.83
92548	X		Posturography	0660	1.6419	$97.44	$30.66	$19.49
92551	E		Pure tone hearing test, air					
92552	X		Pure tone audiometry, air	0364	0.4708	$27.94	$9.06	$5.59
92553	X		Audiometry, air & bone	0365	1.2356	$73.32	$18.95	$14.66
92555	X		Speech threshold audiometry	0364	0.4708	$27.94	$9.06	$5.59
92556	X		Speech audiometry, complete	0364	0.4708	$27.94	$9.06	$5.59
92557	X		Comprehensive hearing test	0365	1.2356	$73.32	$18.95	$14.66
92559	E		Group audiometric testing					
92560	E		Bekesy audiometry, screen					
92561	X		Bekesy audiometry, diagnosis	0364	0.4708	$27.94	$9.06	$5.59
92562	X		Loudness balance test	0364	0.4708	$27.94	$9.06	$5.59
92563	X		Tone decay hearing test	0364	0.4708	$27.94	$9.06	$5.59
92564	X		Sisi hearing test	0364	0.4708	$27.94	$9.06	$5.59
92565	X		Stenger test, pure tone	0364	0.4708	$27.94	$9.06	$5.59
92567	X		Tympanometry	0364	0.4708	$27.94	$9.06	$5.59
92568	X		Acoustic reflex testing	0364	0.4708	$27.94	$9.06	$5.59
92569	X		Acoustic reflex decay test	0364	0.4708	$27.94	$9.06	$5.59
92571	X		Filtered speech hearing test	0364	0.4708	$27.94	$9.06	$5.59
92572	X		Staggered spondaic word test	0365	1.2356	$73.32	$18.95	$14.66
92573	X		Lombard test	0364	0.4708	$27.94	$9.06	$5.59
92575	X		Sensorineural acuity test	0364	0.4708	$27.94	$9.06	$5.59
92576	X		Synthetic sentence test	0364	0.4708	$27.94	$9.06	$5.59
92577	X		Stenger test, speech	0366	1.7743	$105.29	$30.04	$21.06
92579	X		Visual audiometry (vra)	0365	1.2356	$73.32	$18.95	$14.66
92582	X		Conditioning play audiometry	0365	1.2356	$73.32	$18.95	$14.66
92583	X		Select picture audiometry	0364	0.4708	$27.94	$9.06	$5.59
92584	X		Electrocochleography	0660	1.6419	$97.44	$30.66	$19.49
92585	S		Auditor evoke potent, compre	0216	2.672	$158.56		$31.71
92586	S		Auditor evoke potent, limit	0218	1.1408	$67.70		$13.54
92587	X		Evoked auditory test	0363	0.9128	$54.17	$17.44	$10.83
92588	X		Evoked auditory test	0363	0.9128	$54.17	$17.44	$10.83
92590	E		Hearing aid exam, one ear					
92591	E		Hearing aid exam, both ears					
92592	E		Hearing aid check, one ear					
92593	E		Hearing aid check, both ears					
92594	E		Electro hearng aid test, one					
92595	E		Electro hearng aid tst, both					
92596	X		Ear protector evaluation	0364	0.4708	$27.94	$9.06	$5.59
92597	A		Voice Prosthetic Evaluation					
92601	X		Cochlear implt f/up exam < 7	0366	1.7743	$105.29	$30.04	$21.06
92602	X		Reprogram cochlear implt < 7	0366	1.7743	$105.29	$30.04	$21.06
92603	X		Cochlear implt f/up exam 7 >	0366	1.7743	$105.29	$30.04	$21.06
92604	X		Reprogram cochlear implt 7 >	0366	1.7743	$105.29	$30.04	$21.06
92605	A		Eval for nonspeech device rx					
92606	A		Non-speech device service					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
92607	A		Ex for speech device rx, 1hr					
92608	A		Ex for speech device rx addl					
92609	A		Use of speech device service					
92610	A		Evaluate swallowing function					
92611	A		Motion fluoroscopy/swallow					
92612	A		Endoscopy swallow tst (fees)					
92613	E		Endoscopy swallow tst (fees)					
92614	A		Laryngoscopic sensory test					
92615	E		Eval laryngoscopy sense tst					
92616	A		Fees w/laryngeal sense test					
92617	E		Interprt fees/laryngeal test					
92620	X		Auditory function, 60 min	0364	0.4708	$27.94	$9.06	$5.59
92621	N		Auditory function, + 15 min					
92625	X		Tinnitus assessment	0364	0.4708	$27.94	$9.06	$5.59
92700	X		Ent procedure/service	0364	0.4708	$27.94	$9.06	$5.59
92950	S		Heart/lung resuscitation cpr	0094	2.5363	$150.51	$47.62	$30.10
92953	S		Temporary external pacing	0094	2.5363	$150.51	$47.62	$30.10
92960	S		Cardioversion electric, ext	0679	5.5774	$330.98	$95.30	$66.20
92961	S		Cardioversion, electric, int	0679	5.5774	$330.98	$95.30	$66.20
92970	C		Cardioassist, internal					
92971	C		Cardioassist, external					
92973	T		Percut coronary thrombectomy	0676	2.4105	$143.05		$28.61
92974	T		Cath place, cardio brachytx	0103	14.7142	$873.18	$223.63	$174.64
92975	C		Dissolve clot, heart vessel					
92977	T		Dissolve clot, heart vessel	0676	2.4105	$143.05		$28.61
92978	S		Intravasc us, heart add-on	0670	25.4131	$1,508.09	$472.46	$301.62
92979	S		Intravasc us, heart add-on	0416	19.5542	$1,160.40		$232.08
92980	T		Insert intracoronary stent	0104	79.0094	$4,688.65		$937.73
92981	T		Insert intracoronary stent	0104	79.0094	$4,688.65		$937.73
92982	T		Coronary artery dilation	0083	50.8925	$3,020.11		$604.02
92984	T		Coronary artery dilation	0083	50.8925	$3,020.11		$604.02
92986	T		Revision of aortic valve	0083	50.8925	$3,020.11		$604.02
92987	T		Revision of mitral valve	0083	50.8925	$3,020.11		$604.02
92990	T		Revision of pulmonary valve	0083	50.8925	$3,020.11		$604.02
92992	C		Revision of heart chamber					
92993	C		Revision of heart chamber					
92995	T		Coronary atherectomy	0082	85.0126	$5,044.90	$1,085.20	$1,008.98
92996	T		Coronary atherectomy add-on	0082	85.0126	$5,044.90	$1,085.20	$1,008.98
92997	T		Pul art balloon repr, percut	0081	34.4473	$2,044.21		$408.84
92998	T		Pul art balloon repr, percut	0081	34.4473	$2,044.21		$408.84
93000	B		Electrocardiogram, complete					
93005	S		Electrocardiogram, tracing	0099	0.3821	$22.67		$4.53
93010	A		Electrocardiogram report					
93012	N		Transmission of ecg					
93014	B		Report on transmitted ecg					
93015	B		Cardiovascular stress test					
93016	B		Cardiovascular stress test					
93017	X		Cardiovascular stress test	0100	2.4968	$148.17	$41.44	$29.63
93018	B		Cardiovascular stress test					
93024	X		Cardiac drug stress test	0100	2.4968	$148.17	$41.44	$29.63
93025	X		Microvolt t-wave assess	0100	2.4968	$148.17	$41.44	$29.63
93040	B		Rhythm ECG with report					
93041	S		Rhythm ECG, tracing	0099	0.3821	$22.67		$4.53
93042	B		Rhythm ECG, report					
93224	B		ECG monitor/report, 24 hrs					
93225	X		ECG monitor/record, 24 hrs	0097	1.0223	$60.67	$23.79	$12.13
93226	X		ECG monitor/report, 24 hrs	0097	1.0223	$60.67	$23.79	$12.13
93227	B		ECG monitor/review, 24 hrs					
93230	B		ECG monitor/report, 24 hrs					
93231	X		Ecg monitor/record, 24 hrs	0097	1.0223	$60.67	$23.79	$12.13
93232	X		ECG monitor/report, 24 hrs	0097	1.0223	$60.67	$23.79	$12.13
93233	B		ECG monitor/review, 24 hrs					
93235	B		ECG monitor/report, 24 hrs					
93236	X		ECG monitor/report, 24 hrs	0097	1.0223	$60.67	$23.79	$12.13
93237	B		ECG monitor/review, 24 hrs					
93268	B		ECG record/review					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93270	X		ECG recording	0097	1.0223	$60.67	$23.79	$12.13
93271	X		Ecg/monitoring and analysis	0097	1.0223	$60.67	$23.79	$12.13
93272	B		Ecg/review, interpret only					
93278	S		ECG/signal-averaged	0099	0.3821	$22.67		$4.53
93303	S		Echo transthoracic	0269	3.2437	$192.49	$76.99	$38.50
93304	S		Echo transthoracic	0697	1.5357	$91.13	$36.45	$18.23
93307	S		Echo exam of heart	0269	3.2437	$192.49	$76.99	$38.50
93308	S		Echo exam of heart	0697	1.5357	$91.13	$36.45	$18.23
93312	S		Echo transesophageal	0270	6.0192	$357.20	$142.88	$71.44
93313	S		Echo transesophageal	0270	6.0192	$357.20	$142.88	$71.44
93314	N		Echo transesophageal					
93315	S		Echo transesophageal	0270	6.0192	$357.20	$142.88	$71.44
93316	S		Echo transesophageal	0270	6.0192	$357.20	$142.88	$71.44
93317	N		Echo transesophageal					
93318	S		Echo transesophageal intraop	0270	6.0192	$357.20	$142.88	$71.44
93320	S		Doppler echo exam, heart	0671	1.7028	$101.05	$40.42	$20.21
93321	S		Doppler echo exam, heart	0697	1.5357	$91.13	$36.45	$18.23
93325	S		Doppler color flow add-on	0697	1.5357	$91.13	$36.45	$18.23
93350	S		Echo transthoracic	0269	3.2437	$192.49	$76.99	$38.50
93501	T		Right heart catheterization	0080	37.1361	$2,203.77	$838.92	$440.75
93503	T		Insert/place heart catheter	0103	14.7142	$873.18	$223.63	$174.64
93505	T		Biopsy of heart lining	0103	14.7142	$873.18	$223.63	$174.64
93508	T		Cath placement, angiography	0080	37.1361	$2,203.77	$838.92	$440.75
93510	T		Left heart catheterization	000	37.1361	$2,203.77	$838.92	$440.75
93511	T		Left heart catheterization	0080	37.1361	$2,203.77	$838.92	$440.75
93514	T		Left heart catheterization	0080	37.1361	$2,203.77	$838.92	$440.75
93524	T		Left heart catheterization	0080	37.1361	$2,203.77	$838.92	$440.75
93526	T		Rt & Lt heart catheters	0080	37.1361	$2,203.77	$838.92	$440.75
93527	T		Rt & Lt heart catheters	0080	37.1361	$2,203.77	$838.92	$440.75
93528	T		Rt & Lt heart catheters	0080	37.1361	$2,203.77	$838.92	$440.75
93529	T		Rt, lt heart catheterization	0080	37.1361	$2,203.77	$838.92	$440.75
93530	T		Rt heart cath, congenital	0080	37.1361	$2,203.77	$838.92	$440.75
93531	T		R & l heart cath, congenital	0080	37.1361	$2,203.77	$838.92	$440.75
93532	T		R & l heart cath, congenital	0080	37.1361	$2,203.77	$838.92	$440.75
93533	T		R & l heart cath, congenital	0080	37.1361	$2,203.77	$838.92	$440.75
93539	N		Injection, cardiac cath					
93540	N		Injection, cardiac cath					
93541	N		Injection for lung angiogram					
93542	N		Injection for heart x-rays					
93543	N		Injection for heart x-rays					
93544	N		Injection for aortography					
93545	N		Inject for coronary x-rays					
93555	N		Imaging, cardiac cath					
93556	N		Imaging, cardiac cath					
93561	N		Cardiac output measurement					
93562	N		Cardiac output measurement					
93571	S		Heart flow reserve measure	0670	25.4131	$1,508.09	$472.46	$301.62
93572	S		Heart flow reserve measure	0416	19.5542	$1,160.40		$232.08
93580	T		Transcath closure of asd	0434	90.7877	$5,387.61		$1,077.52
93581	T		Transcath closure of vsd	0434	90.7877	$5,387.61		$1,077.52
93600	T		Bundle of His recording	0087	30.7101	$1,822.43		$364.49
93602	T		Intra-atrial recording	0087	30.7101	$1,822.43		$364.49
93603	T		Right ventricular recording	0087	30.7101	$1,822.43		$364.49
93609	T		Map tachycardia, add-on	0087	30.7101	$1,822.43		$364.49
93610	T		Intra-atrial pacing	0087	30.7101	$1,822.43		$364.49
93612	T		Intraventricular pacing	0087	30.7101	$1,822.43		$364.49
93613	T		Electrophys map 3d, add-on	0087	30.7101	$1,822.43		$364.49
93615	T		Esophageal recording	0087	30.7101	$1,822.43		$364.49
93616	T		Esophageal recording	0087	30.7101	$1,822.43		$364.49
93618	T		Heart rhythm pacing	0087	30.7101	$1,822.43		$364.49
93619	T		Electrophysiology evaluation	0085	35.1882	$2,088.17	$426.25	$417.63
93620	T		Electrophysiology evaluation	0085	35.1882	$2,088.17	$426.25	$417.63
93621	T		Electrophysiology evaluation	0085	35.1882	$2,088.17	$426.25	$417.63
93622	T		Electrophysiology evaluation	0085	35.1882	$2,088.17	$426.25	$417.63
93623	T		Stimulation, pacing heart	0087	30.7101	$1,822.43		$364.49
93624	T		Electrophysiologic study	0085	35.1882	$2,088.17	$426.25	$417.63

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93631	T		Heart pacing, mapping	0087	30.7101	$1,822.43		$364.49
93640	S		Evaluation heart device	0084	10.0205	$594.65		$118.93
93641	S		Electrophysiology evaluation	0084	10.0205	$594.65		$118.93
93642	S		Electrophysiology evaluation	0084	10.0205	$594.65		$118.93
93650	T		Ablate heart dysrhythm focus	0086	44.2596	$2,626.50	$833.33	$525.30
93651	T		Ablate heart dysrhythm focus	0086	44.2596	$2,626.50	$833.33	$525.30
93652	T		Ablate heart dysrhythm focus	0086	44.2596	$2,626.50	$833.33	$525.30
93660	S		Tilt table evaluation	0101	4.2787	$253.91	$101.56	$50.78
93662	S		Intracardiac ecg (ice)	0670	25.4131	$1,508.09	$472.46	$301.62
93668	E		Peripheral vascular rehab					
93701	S		Bioimpedance, thoracic	0099	0.3821	$22.67		$4.53
93720	B		Total body plethysmography					
93721	X		Plethysmography tracing	0368	0.9761	$57.92	$23.16	$11.58
93722	B		Plethysmography report					
93724	S		Analyze pacemaker system	0690	0.3755	$22.28	$8.91	$4.46
93727	S		Analyze ilr system	0690	0.3755	$22.28	$8.91	$4.46
93731	S		Analyze pacemaker system	0690	0.3755	$22.28	$8.91	$4.46
93732	S		Analyze pacemaker system	0690	0.3755	$22.28	$8.91	$4.46
93733	S		Telephone analy, pacemaker	0690	0.3755	$22.28	$8.91	$4.46
93734	S		Analyze pacemaker system	0690	0.3755	$22.28	$8.91	$4.46
93735	S		Analyze pacemaker system	0690	0.3755	$22.28	$8.91	$4.46
93736	S		Telephonic analy, pacemaker	0690	0.3755	$22.28	$8.91	$4.46
93740	X		Temperature gradient studies	0368	0.9761	$57.92	$23.16	$11.58
93741	S		Analyze ht pace device sngl	0689	0.5735	$34.03		$6.81
93742	S		Analyze ht pace device sngl	0689	0.5735	$34.03		$6.81
93743	S		Analyze ht pace device dual	0689	0.5735	$34.03		$6.81
93744	S		Analyze ht pace device dual	0689	0.5735	$34.03		$6.81
93745	S		Set-up cardiovert-defibrill	0689	0.5735	$34.03		$6.81
93760	E		Cephalic thermogram					
93762	E		Peripheral thermogram					
93770	N		Measure venous pressure					
93784	E		Ambulatory BP monitoring					
93786	X		Ambulatory BP recording	0097	1.0223	$60.67	$23.79	$12.13
93788	X		Ambulatory BP analysis	0097	1.0223	$60.67	$23.79	$12.13
93790	B		Review/report BP recording					
93797	S		Cardiac rehab	0095	0.5885	$34.92	$13.96	$6.98
93798	S		Cardiac rehab/monitor	0095	0.5885	$34.92	$13.96	$6.98
93799	S		Cardiovascular procedure	0096	1.6307	$96.77	$38.70	$19.35
93875	S		Extracranial study	0096	1.6307	$96.77	$38.70	$19.35
93880	S		Extracranial study	0267	2.6327	$156.23	$62.18	$31.25
93882	S		Extracranial study	0267	2.6327	$156.23	$62.18	$31.25
93886	S		Intracranial study	0267	2.6327	$156.23	$62.18	$31.25
93888	S		Intracranial study	0266	1.6393	$97.28	$38.91	$19.46
93890	S		Tcd, vasoreactivity study	0266	1.6393	$97.28	$38.91	$19.46
93892	S		Tcd, emboli detect w/o inj	0266	1.6393	$97.28	$38.91	$19.46
93893	S		Tcd, emboli detect w/inj	0266	1.6393	$97.28	$38.91	$19.46
93922	S		Extremity study	0096	1.6307	$96.77	$38.70	$19.35
93923	S		Extremity study	0096	1.6307	$96.77	$38.70	$19.35
93924	S		Extremity study	0096	1.6307	$96.77	$38.70	$19.35
93925	S		Lower extremity study	0267	2.6327	$156.23	$62.18	$31.25
93926	S		Lower extremity study	0266	1.6393	$97.28	$38.91	$19.46
93930	S		Upper extremity study	0267	2.6327	$156.23	$62.18	$31.25
93931	S		Upper extremity study	0266	1.6393	$97.28	$38.91	$19.46
93965	S		Extremity study	0096	1.6307	$96.77	$38.70	$19.35
93970	S		Extremity study	0267	2.6327	$156.23	$62.18	$31.25
93971	S		Extremity study	0266	1.6393	$97.28	$38.91	$19.46
93975	S		Vascular study	0267	2.6327	$156.23	$62.18	$31.25
93976	S		Vascular study	0267	2.6327	$156.23	$62.18	$31.25
93978	S		Vascular study	0266	1.6393	$97.28	$38.91	$19.46
93979	S		Vascular study	0266	1.6393	$97.28	$38.91	$19.46
93980	S		Penile vascular study	0267	2.6327	$156.23	$62.18	$31.25
93981	S		Penile vascular study	0266	1.6393	$97.28	$38.91	$19.46
93990	S		Doppler flow testing	0266	1.6393	$97.28	$38.91	$19.46
94010	X		Breathing capacity test	0368	0.9761	$57.92	$23.16	$11.58
94014	X		Patient recorded spirometry	0367	0.6659	$39.52	$14.80	$7.90
94015	X		Patient recorded spirometry	0367	0.6659	$39.52	$14.80	$7.90

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
94016	A		Review patient spirometry					
94060	X		Evaluation of wheezing	0368	0.9761	$57.92	$23.16	$11.58
94070	X		Evaluation of wheezing	0369	2.7519	$163.31	$44.18	$32.66
94150	X		Vital capacity test	0367	0.6659	$39.52	$14.80	$7.90
94200	X		Lung function test (MBC/MVV)	0367	0.6659	$39.52	$14.80	$7.90
94240	X		Residual lung capacity	0368	0.9761	$57.92	$23.16	$11.58
94250	X		Expired gas collection	0367	0.6659	$39.52	$14.80	$7.90
94260	X		Thoracic gas volume	0367	0.6659	$39.52	$14.80	$7.90
94350	X		Lung nitrogen washout curve	0367	0.6659	$39.52	$14.80	$7.90
94360	X		Measure airflow resistance	0367	0.6659	$39.52	$14.80	$7.90
94370	X		Breath airway closing volume	0367	0.6659	$39.52	$14.80	$7.90
94375	X		Respiratory flow volume loop	0367	0.6659	$39.52	$14.80	$7.90
94400	X		CO2 breathing response curve	0367	0.6659	$39.52	$14.80	$7.90
94450	X		Hypoxia response curve	0368	0.9761	$57.92	$23.16	$11.58
94452	X		Hast w/report	0368	0.9761	$57.92	$23.16	$11.58
94453	X		Hast w/oxygen titrate	0368	0.9761	$57.92	$23.16	$11.58
94620	X		Pulmonary stress test/simple	0368	0.9761	$57.92	$23.16	$11.58
94621	X		Pulm stress test/complex	0369	2.7519	$163.31	$44.18	$32.66
94640	S		Airway inhalation treatment	0077	0.3444	$20.44	$7.74	$4.09
94642	S		Aerosol inhalation treatment	0078	1.0236	$60.74	$14.55	$12.15
94656	S		Initial ventilator mgmt	0079	2.3482	$139.35		$27.87
94657	S		Continued ventilator mgmt	0079	2.3482	$139.35		$27.87
94660	S		Pos airway pressure, CPAP	0068	1.2293	$72.95	$29.18	$14.59
94662	S		Neg press ventilation, cnp	0079	2.3482	$139.35		$27.87
94664	S		Aerosol or vapor inhalations	0077	0.3444	$20.44	$7.74	$4.09
94667	S		Chest wall manipulation	0077	0.3444	$20.44	$7.74	$4.09
94668	S		Chest wall manipulation	0077	0.3444	$20.44	$7.74	$4.09
94680	X		Exhaled air analysis, o2	0367	0.6659	$39.52	$14.80	$7.90
94681	X		Exhaled air analysis, o2/co2	0368	0.9761	$57.92	$23.16	$11.58
94690	X		Exhaled air analysis	0368	0.9761	$57.92	$23.16	$11.58
94720	X		Monoxide diffusing capacity	0368	0.9761	$57.92	$23.16	$11.58
94725	X		Membrane diffusion capacity	0368	0.9761	$57.92	$23.16	$11.58
94750	X		Pulmonary compliance study	0368	0.9761	$57.92	$23.16	$11.58
94760	N		Measure blood oxygen level					
94761	N		Measure blood oxygen level					
94762	N		Measure blood oxygen level					
94770	X		Exhaled carbon dioxide test	0367	0.6659	$39.52	$14.80	$7.90
94772	X		Breath recording, infant	0369	2.7519	$163.31	$44.18	$32.66
94799	X		Pulmonary service/procedure	0367	0.6659	$39.52	$14.80	$7.90
95004	X		Percut allergy skin tests	0381	0.1884	$11.18	$2.35	$2.24
95010	X		Percut allergy titrate test	0381	0.1884	$11.18	$2.35	$2.24
95015	X		Id allergy titrate-drug/bug	0381	0.1884	$11.18	$2.35	$2.24
95024	X		Id allergy test, drug/bug	0381	0.1884	$11.18	$2.35	$2.24
95027	X		Skin end point titration	0381	0.1884	$11.18	$2.35	$2.24
95028	X		Id allergy test-delayed type	0381	0.1884	$11.18	$2.35	$2.24
95044	X		Allergy patch tests	0381	0.1884	$11.18	$2.35	$2.24
95052	X		Photo patch test	0381	0.1884	$11.18	$2.35	$2.24
95056	X		Photosensitivity tests	0370	1.1232	$66.65		$13.33
95060	X		Eye allergy tests	0370	1.1232	$66.65		$13.33
95065	X		Nose allergy test	0381	0.1884	$11.18	$2.35	$2.24
95070	X		Bronchial allergy tests	0369	2.7519	$163.31	$44.18	$32.66
95071	X		Bronchial allergy tests	0369	2.7519	$163.31	$44.18	$32.66
95075	X		Ingestion challenge test	0361	3.6216	$214.92	$83.23	$42.98
95078	X		Provocative testing	0370	1.1232	$66.65		$13.33
95115	X		Immunotherapy, one injection	0352	0.1413	$8.39		$1.68
95117	X		Immunotherapy injections	0353	0.3954	$23.46		$4.69
95120	B		Immunotherapy, one injection					
95125	B		Immunotherapy, many antigens					
95130	B		Immunotherapy, insect venom					
95131	B		Immunotherapy, insect venoms					
95132	B		Immunotherapy, insect venoms					
95133	B		Immunotherapy, insect venoms					
95134	B		Immunotherapy, insect venoms					
95144	X		Antigen therapy services	0353	0.3954	$23.46		$4.69
95145	X		Antigen therapy services	0353	0.3954	$23.46		$4.69
95146	X		Antigen therapy services	0359	0.8312	$49.33		$9.87

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
95147	X		Antigen therapy services	0359	0.8312	$49.33		$9.87
95148	X		Antigen therapy services	0353	0.3954	$23.46		$4.69
95149	X		Antigen therapy services	0352	0.1413	$8.39		$1.68
95165	X		Antigen therapy services	0353	0.3954	$23.46		$4.69
95170	X		Antigen therapy services	0352	0.1413	$8.39		$1.68
95180	X		Rapid desensitization	0370	1.1232	$66.65		$13.33
95199	X		Allergy immunology services	0370	1.1232	$66.65		$13.33
95250	X		Glucose monitoring, cont	0421	1.66	$98.51		$19.70
95805	S		Multiple sleep latency test	0209	11.5713	$686.68	$274.67	$137.34
95806	S		Sleep study, unattended	0213	2.2932	$136.09	$54.43	$27.22
95807	S		Sleep study, attended	0209	11.5713	$686.68	$274.67	$137.34
95808	S		Polysomnography, 1-3	0209	11.5713	$686.68	$274.67	$137.34
95810	S		Polysomnography, 4 or more	0209	11.5713	$686.68	$274.67	$137.34
95811	S		Polysomnography w/cpap	0209	11.5713	$686.68	$274.67	$137.34
95812	S		Electroencephalogram (EEG)	0213	2.2932	$136.09	$54.43	$27.22
95813	S		Eeg, over 1 hour	0213	2.2932	$136.09	$54.43	$27.22
95816	S		Electroencephalogram (EEG)	0213	2.2932	$136.09	$54.43	$27.22
95819	S		Electroencephalogram (EEG)	0213	2.2932	$136.09	$54.43	$27.22
95822	S		Sleep electroencephalogram	0213	2.2932	$136.09	$54.43	$27.22
95824	S		Eeg, cerebral death only	0214	1.1353	$67.37	$26.94	$13.47
95827	S		night electroencephalogram	0213	2.2932	$136.09	$54.43	$27.22
95829	S		Surgery electrocorticogram	0214	1.1353	$67.37	$26.94	$13.47
95830	B		Insert electrodes for EEG					
95831	A		Limb muscle testing, manual					
95832	A		Hand muscle testing, manual					
95833	A		Body muscle testing, manual					
95834	A		Body muscle testing, manual					
95851	A		Range of motion measurements					
95852	A		Range of motion measurements					
95857	S		Tensilon test	0218	1.1408	$67.70		$13.54
95858	S		Tensilon test & myogram	0215	0.6115	$36.29	$14.51	$7.26
95860	S		Muscle test, one limb	0218	1.1408	$67.70		$13.54
95861	S		Muscle test, 2 limbs	0218	1.1408	$67.70		$13.54
95863	S		Muscle test, 3 limbs	0218	1.1408	$67.70		$13.54
95864	S		Muscle test, 4 limbs	0218	1.1408	$67.70		$13.54
95867	S		Muscle test, head or neck	0218	1.1408	$67.70		$13.54
95868	S		Muscle test cran nerve bilat	0218	1.1408	$67.70		$13.54
95869	S		Muscle test, thor paraspinal	0215	0.6115	$36.29	$14.51	$7.26
95870	S		Muscle test, nonparaspinal	0215	0.6115	$36.29	$14.51	$7.26
95872	S		Muscle test, one fiber	0218	1.1408	$67.70		$13.54
95875	S		Limb exercise test	0215	0.6115	$36.29	$14.51	$7.26
95900	S		Motor nerve conduction test	0215	0.6115	$36.29	$14.51	$7.26
95903	S		Motor nerve conduction test	0215	0.6115	$36.29	$14.51	$7.26
95904	S		Sense nerve conduction test	0215	0.6115	$36.29	$14.51	$7.26
95920	S		Intraop nerve test add-on	0216	2.672	$158.56		$31.71
95921	S		Autonomic nerv function test	0218	1.1408	$67.70		$13.54
95922	S		Autonomic nerv function test	0218	1.1408	$67.70		$13.54
95923	S		Autonomic nerv function test	0218	1.1408	$67.70		$13.54
95925	S		Somatosensory testing	0216	2.672	$158.56		$31.71
95926	S		Somatosensory testing	0216	2.672	$158.56		$31.71
95927	S		Somatosensory testing	0216	2.672	$158.56		$31.71
95928	S		C motor evoked, uppr limbs	0218	1.1408	$67.70		$13.54
95929	S		C motor evoked, lwr limbs	0218	1.1408	$67.70		$13.54
95930	S		Visual evoked potential test	0216	2.672	$158.56		$31.71
95933	S		Blink reflex test	0215	0.6115	$36.29	$14.51	$7.26
95934	S		H-reflex test	0215	0.6115	$36.29	$14.51	$7.26
95936	S		H-reflex test	0215	0.6115	$36.29	$14.51	$7.26
95937	S		Neuromuscular junction test	0218	1.1408	$67.70		$13.54
95950	S		Ambulatory eeg monitoring	0209	11.5713	$686.68	$274.67	$137.34
95951	S		EEG monitoring/videorecord	0209	11.5713	$686.68	$274.67	$137.34
95953	S		EEG monitoring/computer	0209	11.5713	$686.68	$274.67	$137.34
95954	S		EEG monitoring/giving drugs	0214	1.1353	$67.37	$26.94	$13.47
95955	S		EEG during surgery	0213	2.2932	$136.09	$54.43	$27.22
95956	S		Eeg monitoring, cable/radio	0209	11.5713	$686.68	$274.67	$137.34
95957	S		EEG digital analysis	0214	1.1353	$67.37	$26.94	$13.47
95958	S		EEG monitoring/function test	0213	2.2932	$136.09	$54.43	$27.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
95961	S		Electrode stimulation, brain	0216	2.672	$158.56		$31.71
95962	S		Electrode stim, brain add-on	0216	2.672	$158.56		$31.71
95965	T		Meg, spontaneous	0430	11.404	$676.75		$135.35
95966	T		Meg, evoked, single	0430	11.404	$676.75		$135.35
95967	T		Meg, evoked, each add'l	0430	11.404	$676.75		$135.35
95970	S		Analyze neurostim, no prog	0218	1.1408	$67.70		$13.54
95971	S		Analyze neurostim, simple	0692	2.0111	$119.34	$30.16	$23.87
95972	S		Analyze neurostim, complex	0692	2.0111	$119.34	$30.16	$23.87
95973	S		Analyze neurostim, complex	0692	2.0111	$119.34	$30.16	$23.87
95974	S		Cranial neurostim, complex	0692	2.0111	$119.34	$30.16	$23.87
95975	S		Cranial neurostim, complex	0692	2.0111	$119.34	$30.16	$23.87
95978	S		Analyze neurostim brain/1h	0692	2.0111	$119.34	$30.16	$23.87
95979	S		Analyz neurostim brain addon	0692	2.0111	$119.34	$30.16	$23.87
95990	T		Spin/brain pump refil & main	0125	1.9331	$114.72		$22.94
95991	T		Spin/brain pump refil & main	0125	1.9331	$114.72		$22.94
95999	S		Neurological procedure	0215	0.6115	$36.29	$14.51	$7.26
96000	S		Motion analysis, video/3d	0216	2.672	$158.56		$31.71
96001	S		Motion test w/ft press meas	0216	2.672	$158.56		$31.71
96002	S		Dynamic surface emg	0218	1.1408	$67.70		$13.54
96003	S		Dynamic fine wire emg	0215	0.6115	$36.29	$14.51	$7.26
96004	E		Phys review of motion tests					
96100	X		Psychological testing	0373	2.1926	$130.12		$26.02
96105	A		Assessment of aphasia					
96110	X		Developmental test, lim	0373	2.1926	$130.12		$26.02
96111	X		Developmental test, extend	0373	2.1926	$130.12		$26.02
96115	X		Neurobehavior status exam	0373	2.1926	$130.12		$26.02
96117	X		Neuropsych test battery	0373	2.1926	$130.12		$26.02
96150	S		Assess lth/behave, init	0432	0.6949	$41.24		$8.25
96151	S		Assess hlth/behave, subseq	0432	0.6949	$41.24		$8.25
96152	S		Intervene hlth/behave, indiv	0432	0.6949	$41.24		$8.25
96153	S		Intervene hlth/behave, group	0432	0.6949	$41.24		$8.25
96154	S		Interv hlth/behav, fam w/pt	0432	0.6949	$41.24		$8.25
96155	E		Interv hlth/behav fam no pt					
96400	S		Chemotherapy, sc/im	0116	1.1453	$67.97		$13.59
96405	S		Intralesional chemo admin	0116	1.1453	$67.97		$13.59
96406	S		Intralesional chemo admin	0116	1.1453	$67.97		$13.59
96408	S		Chemotherapy, push technique	0116	1.1453	$67.97		$13.59
96410	S		Chemotherapy,infusion method	0117	3.2378	$192.14	$42.54	$38.43
96412	N		Chemo, infuse method add-on					
96414	S		Chemo, infuse method add-on	0117	3.2378	$192.14	$42.54	$38.43
96420	S		Chemotherapy, push technique	0116	1.1453	$67.97		$13.59
96422	S		Chemotherapy,infusion method	0117	3.2378	$192.14	$42.54	$38.43
96423	N		Chemo, infuse method add-on					
96425	S		Chemotherapy,infusion method	0117	3.2378	$192.14	$42.54	$38.43
96440	S		Chemotherapy, intracavitary	0116	1.1453	$67.97		$13.59
96445	S		Chemotherapy, intracavitary	0116	1.1453	$67.97		$13.59
96450	S		Chemotherapy, into CNS	0116	1.1453	$67.97		$13.59
96520	T		Port pump refill & main	0125	1.9331	$114.72		$22.94
96530	T		Pump refilling, maintenance	0125	1.9331	$114.72		$22.94
96542	S		Chemotherapy injection	0116	1.1453	$67.97		$13.59
96545	N		Provide chemotherapy agent					
96549	S		Chemotherapy, unspecified	0116	1.1453	$67.97		$13.59
96567	T		Photodynamic tx, skin	0016	2.5834	$153.31	$33.57	$30.66
96570	T		Photodynamic tx, 30 min	0015	1.6514	$98.00	$20.29	$19.60
96571	T		Photodynamic tx, addl 15 min	0015	1.6514	$98.00	$20.29	$19.60
96900	S		Ultraviolet light therapy	0001	0.4213	$25.00	$7.00	$5.00
96902	N		Trichogram					
96910	S		Photochemotherapy with UV-B	0001	0.4213	$25.00	$7.00	$5.00
96912	S		Photochemotherapy with UV-A	0001	0.4213	$25.00	$7.00	$5.00
96913	S		Photochemotherapy, UV-A or B	0683	1.9006	$112.79	$25.34	$22.56
96920	T		Laser tx, skin < 250 sq cm	0013	1.1078	$65.74	$14.20	$13.15
96921	T		Laser tx, skin 250-500 sq cm	0013	1.1078	$65.74	$14.20	$13.15
96922	T		Laser tx, skin > 500 sq cm	0013	1.1078	$65.74	$14.20	$13.15
96999	T		Dermatological procedure	0010	0.5719	$33.94	$9.65	$6.79
97001	A		Pt evaluation					
97002	A		Pt re-evaluation					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
97003	A		Ot evaluation					
97004	A		Ot re-evaluation					
97005	E		Athletic train eval					
97006	E		Athletic train reeval					
97010	A		Hot or cold packs therapy					
97012	A		Mechanical traction therapy					
97014	E		Electric stimulation therapy					
97016	A		Vasopneumatic device therapy					
97018	A		Paraffin bath therapy					
97020	A		Microwave therapy					
97022	A		Whirlpool therapy					
97024	A		Diathermy treatment					
97026	A		Infrared therapy					
97028	A		Ultraviolet therapy					
97032	A		Electrical stimulation					
97033	A		Electric current therapy					
97034	A		Contrast bath therapy					
97035	A		Ultrasound therapy					
97036	A		Hydrotherapy					
97039	A		Physical therapy treatment					
97110	A		Therapeutic exercises					
97112	A		Neuromuscular reeducation					
97113	A		Aquatic therapy/exercises					
97116	A		Gait training therapy					
97124	A		Massage therapy					
97139	A		Physical medicine procedure					
97140	A		Manual therapy					
97150	A		Group therapeutic procedures					
97504	A		Orthotic training					
97520	A		Prosthetic training					
97530	A		Therapeutic activities					
97532	A		Cognitive skills development					
97533	A		Sensory integration					
97535	A		Self care mngment training					
97537	A		Community/work reintegration					
97542	A		Wheelchair mngment training					
97545	A		Work hardening					
97546	A		Work hardening add-on					
97597	A		Active wound care/20 cm or <					
97598	A		Active wound care > 20 cm					
97602	A		Wound(s) care non-selective					
97605	A		Neg press wound tx, < 50 cm					
97606	A		Neg press wound tx, > 50 cm					
97703	A		Prosthetic checkout					
97750	A		Physical performance test					
97755	A		Assistive technology assess					
97799	A		Physical medicine procedure					
97802	A		Medical nutrition, indiv, in					
97803	A		Med nutrition, indiv, subseq					
97804	A		Medical nutrition, group					
97810	E		Acupunct w/o stimul 15 min					
97811	E		Acupunct w/o stimul addl 15m					
97813	E		Acupunct w/stimul 15 min					
97814	E		Acupunct w/stimul addl 15m					
98925	S		Osteopathic manipulation	0060	0.4935	$29.29		$5.86
98926	S		Osteopathic manipulation	0060	0.4935	$29.29		$5.86
98927	S		Osteopathic manipulation	0060	0.4935	$29.29		$5.86
98928	S		Osteopathic manipulation	0060	0.4935	$29.29		$5.86
98929	S		Osteopathic manipulation	0060	0.4935	$29.29		$5.86
98940	S		Chiropractic manipulation	0060	0.4935	$29.29		$5.86
98941	S		Chiropractic manipulation	0060	0.4935	$29.29		$5.86
98942	S		Chiropractic manipulation	0060	0.4935	$29.29		$5.86
98943	E		Chiropractic manipulation					
99000	B		Specimen handling					
99001	B		Specimen handling					
99002	B		Device handling					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
99024	B		Postop follow-up visit					
99026	E		In-hospital on call service					
99027	E		Out-of-hosp on call service					
99050	B		Medical services after hrs					
99052	B		Medical services at night					
99054	B		Medical servcs, unusual hrs					
99056	B		Non-office medical services					
99058	B		Office emergency care					
99070	B		Special supplies					
99071	B		Patient education materials					
99075	E		Medical testimony					
99078	N		Group health education					
99080	B		Special reports or forms					
99082	B		Unusual physician travel					
99090	B		Computer data analysis					
99091	E		Collect/review data from pt					
99100	B		Special anesthesia service					
99116	B		Anesthesia with hypothermia					
99135	B		Special anesthesia procedure					
99140	B		Emergency anesthesia					
99141	N		Sedation, iv/im or inhalant					
99142	N		Sedation, oral/rectal/nasal					
99170	T		Anogenital exam, child	0191	0.167	$9.91	$2.78	$1.98
99172	E		Ocular function screen					
99173	E		Visual acuity screen					
99175	N		Induction of vomiting					
99183	B		Hyperbaric oxygen therapy					
99185	N		Regional hypothermia					
99186	N		Total body hypothermia					
99190	C		Special pump services					
99191	C		Special pump services					
99192	C		Special pump services					
99195	X		Phlebotomy	0372	0.57	$33.83	$10.09	$6.77
99199	B		Special service/proc/report					
99201	V		Office/outpatient visit, new	0600	0.8688	$51.56		$10.31
99202	V		Office/outpatient visit, new	0600	0.8688	$51.56		$10.31
99203	V		Office/outpatient visit, new	0601	1.0038	$59.57		$11.91
99204	V		Office/outpatient visit, new	0602	1.4284	$84.77		$16.95
99205	V		Office/outpatient visit, new	0602	1.4284	$84.77		$16.95
99211	V		Office/outpatient visit, est	0600	0.8688	$51.56		$10.31
99212	V		Office/outpatient visit, est	0600	0.8688	$51.56		$10.31
99213	V		Office/outpatient visit, est	0601	1.0038	$59.57		$11.91
99214	V		Office/outpatient visit, est	0602	1.4284	$84.77		$16.95
99215	V		Office/outpatient visit, est	0602	1.4284	$84.77		$16.95
99217	B		Observation care discharge					
99218	B		Observation care					
99219	B		Observation care					
99220	B		Observation care					
99221	E		Initial hospital care					
99222	E		Initial hospital care					
99223	E		Initial hospital care					
99231	E		Subsequent hospital care					
99232	E		Subsequent hospital care					
99233	E		Subsequent hospital care					
99234	B		Observ/hosp same date					
99235	B		Observ/hosp same date					
99236	B		Observ/hosp same date					
99238	E		Hospital discharge day					
99239	E		Hospital discharge day					
99241	V		Office consultation	0600	0.8688	$51.56		$10.31
99242	V		Office consultation	0600	0.8688	$51.56		$10.31
99243	V		Office consultation	0601	1.0038	$59.57		$11.91
99244	V		Office consultation	0602	1.4284	$84.77		$16.95
99245	V		Office consultation	0602	1.4284	$84.77		$16.95
99251	C		Initial inpatient consult					
99252	C		Initial inpatient consult					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
99253	C		Initial inpatient consult					
99254	C		Initial inpatient consult					
99255	C		Initial inpatient consult					
99261	C		Follow-up inpatient consult					
99262	C		Follow-up inpatient consult					
99263	C		Follow-up inpatient consult					
99271	V		Confirmatory consultation	0600	0.8688	$51.56		$10.31
99272	V		Confirmatory consultation	0600	0.8688	$51.56		$10.31
99273	V		Confirmatory consultation	0601	1.0038	$59.57		$11.91
99274	V		Confirmatory consultation	0602	1.4284	$84.77		$16.95
99275	V		Confirmatory consultation	0602	1.4284	$84.77		$16.95
99281	V		Emergency dept visit	0610	1.2947	$76.83	$19.48	$15.37
99282	V		Emergency dept visit	0610	1.2947	$76.83	$19.48	$15.37
99283	V		Emergency dept visit	0611	2.2718	$134.82	$35.76	$26.96
99284	V		Emergency dept visit	0612	3.9853	$236.50	$54.12	$47.30
99285	V		Emergency dept visit	0612	3.9853	$236.50	$54.12	$47.30
99288	B		Direct advanced life support					
99289	N		Pt transport, 30-74 min					
99290	N		Pt transport, addl 30 min					
99291	S		Critical care, first hour	0620	8.2996	$492.52	$135.68	$98.50
99292	N		Critical care, add=l 30 min					
99293	C		Ped critical care, initial					
99294	C		Ped critical care, subseq					
99295	C		Neonatal critical care					
99296	C		Neonatal critical care					
99298	C		Neonatal critical care					
99299	C		Ic, lbw infant 1500-2500 gm					
99301	B		Nursing facility care					
99302	B		Nursing facility care					
99303	B		Nursing facility care					
99311	B		Nursing fac care, subseq					
99312	B		Nursing fac care, subseq					
99313	B		Nursing fac care, subseq					
99315	B		Nursing fac discharge day					
99316	B		Nursing fac discharge day					
99321	B		Rest home visit, new patient					
99322	B		Rest home visit, new patient					
99323	B		Rest home visit, new patient					
99331	B		Rest home visit, est pat					
99332	B		Rest home visit, est pat					
99333	B		Rest home visit, est pat					
99341	B		Home visit, new patient					
99342	B		Home visit, new patient					
99343	B		Home visit, new patient					
99344	B		Home visit, new patient					
99345	B		Home visit, new patient					
99347	B		Home visit, est patient					
99348	B		Home visit, est patient					
99349	B		Home visit, est patient					
99350	B		Home visit, est patient					
99354	N		Prolonged service, office					
99355	N		Prolonged service, office					
99356	C		Prolonged service, inpatient					
99357	C		Prolonged service, inpatient					
99358	N		Prolonged serv, w/o contact					
99359	N		Prolonged serv, w/o contact					
99360	B		Physician standby services					
99361	E		Physician/team conference					
99362	E		Physician/team conference					
99371	B		Physician phone consultation					
99372	B		Physician phone consultation					
99373	B		Physician phone consultation					
99374	B		Home health care supervision					
99375	E		Home health care supervision					
99377	B		Hospice care supervision					
99378	E		Hospice care supervision					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
99379	B		Nursing fac care supervision					
99380	B		Nursing fac care supervision					
99381	E		Prev visit, new, infant					
99382	E		Prev visit, new, age 1-4					
99383	E		Prev visit, new, age 5-11					
99384	E		Prev visit, new, age 12-17					
99385	E		Prev visit, new, age 18-39					
99386	E		Prev visit, new, age 40-64					
99387	E		Prev visit, new, 65 & over					
99391	E		Prev visit, est, infant					
99392	E		Prev visit, est, age 1-4					
99393	E		Prev visit, est, age 5-11					
99394	E		Prev visit, est, age 12-17					
99395	E		Prev visit, est, age 18-39					
99396	E		Prev visit, est, age 40-64					
99397	E		Prev visit, est, 65 & over					
99401	E		Preventive counseling, indiv					
99402	E		Preventive counseling, indiv					
99403	E		Preventive counseling, indiv					
99404	E		Preventive counseling, indiv					
99411	E		Preventive counseling, group					
99412	E		Preventive counseling, group					
99420	E		Health risk assessment test					
99429	E		Unlisted preventive service					
99431	V		Initial care, normal newborn	0600	0.8688	$51.56		$10.31
99432	N		Newborn care, not in hosp					
99433	C		Normal newborn care/hospital					
99435	E		Newborn discharge day hosp					
99436	N		Attendance, birth					
99440	S		Newborn resuscitation	0094	2.5363	$150.51	$47.62	$30.10
99450	E		Life/disability evaluation					
99455	B		Disability examination					
99456	B		Disability examination					
99499	B		Unlisted e&m service					
99500	E		Home visit, prenatal					
99501	E		Home visit, postnatal					
99502	E		Home visit, nb care					
99503	E		Home visit, resp therapy					
99504	E		Home visit mech ventilator					
99505	E		Home visit, stoma care					
99506	E		Home visit, im injection					
99507	E		Home visit, cath maintain					
99509	E		Home visit day life activity					
99510	E		Home visit, sing/m/fam couns					
99511	E		Home visit, fecal/enema mgmt					
99512	E		Home visit for hemodialysis					
99600	E		Home visit nos					
99601	E		Home infusion/visit, 2 hrs					
99602	E		Home infusion, each addtl hr					
A0021	E		Outside state ambulance serv					
A0080	E		Noninterest escort in non er					
A0090	E		Interest escort in non er					
A0100	E		Nonemergency transport taxi					
A0110	E		Nonemergency transport bus					
A0120	E		Noner transport mini-bus					
A0130	E		Noner transport wheelch van					
A0140	E		Nonemergency transport air					
A0160	E		Noner transport case worker					
A0170	E		Noner transport parking fees					
A0180	E		Noner transport lodgng recip					
A0190	E		Noner transport meals recip					
A0200	E		Noner transport lodgng escrt					
A0210	E		Noner transport meals escort					
A0225	A		Neonatal emergency transport					
A0380	A		Basic life support mileage					
A0382	A		Basic support routine suppls					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A0384	A		Bls defibrillation supplies					
A0390	A		Advanced life support mileag					
A0392	A		Als defibrillation supplies					
A0394	A		Als IV drug therapy supplies					
A0396	A		Als esophageal intub suppls					
A0398	A		Als routine disposble suppls					
A0420	A		Ambulance waiting 1/2 hr					
A0422	A		Ambulance 02 life sustaining					
A0424	A		Extra ambulance attendant					
A0425	A		Ground mileage					
A0426	A		Als 1					
A0427	A		ALS1-emergency					
A0428	A		bls					
A0429	A		BLS-emergency					
A0430	A		Fixed wing air transport					
A0431	A		Rotary wing air transport					
A0432	A		PI volunteer ambulance co					
A0433	A		als 2					
A0434	A		Specialty care transport					
A0435	A		Fixed wing air mileage					
A0436	A		Rotary wing air mileage					
A0800	B		Amb trans 7pm-7am					
A0888	E		Noncovered ambulance mileage					
A0999	A		Unlisted ambulance service					
A4206	E		1 CC sterile syringe&needle					
A4207	E		2 CC sterile syringe&needle					
A4208	E		3 CC sterile syringe&needle					
A4209	E		5+ CC sterile syringe&needle					
A4210	E		Nonneedle injection device					
A4211	B		Supp for self-adm injections					
A4212	B		Non coring needle or stylet					
A4213	E		20+ CC syringe only					
A4215	E		Sterile needle					
A4216	A		Sterile water/saline, 10 ml					
A4217	A		Sterile water/saline, 500 ml					
A4220	N		Infusion pump refill kit					
A4221	Y		Maint drug infus cath per wk					
A4222	Y		Drug infusion pump supplies					
A4223	E		Infusion supplies w/o pump					
A4230	Y		Infus insulin pump non needl					
A4231	Y		Infusion insulin pump needle					
A4232	Y		Syringe w/needle insulin 3cc					
A4244	E		Alcohol or peroxide per pint					
A4245	E		Alcohol wipes per box					
A4246	E		Betadine/phisohex solution					
A4247	E		Betadine/iodine swabs/wipes					
A4248	N		Chlorhexidine antisept					
A4250	E		Urine reagent strips/tablets					
A4253	Y		Blood glucose/reagent strips					
A4254	Y		Battery for glucose monitor					
A4255	Y		Glucose monitor platforms					
A4256	Y		Calibrator solution/chips					
A4257	Y		Replace Lensshield Cartridge					
A4258	Y		Lancet device each					
A4259	Y		Lancets per box					
A4260	E		Levonorgestrel implant					
A4261	E		Cervical cap contraceptive					
A4262	N		Temporary tear duct plug					
A4263	N		Permanent tear duct plug					
A4265	Y		Paraffin					
A4266	E		Diaphragm					
A4267	E		Male condom					
A4268	E		Female condom					
A4269	E		Spermicide					
A4270	A		Disposable endoscope sheath					
A4280	A		Brst prsths adhsv attchmnt					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4281	E		Replacement breastpump tube					
A4282	E		Replacement breastpump adpt					
A4283	E		Replacement breastpump cap					
A4284	E		Replcmnt breast pump shield					
A4285	E		Replcmnt breast pump bottle					
A4286	E		Replcmnt breastpump lok ring					
A4290	B		Sacral nerve stim test lead					
A4300	N		Cath impl vasc access portal					
A4301	N		Implantable access syst perc					
A4305	A		Drug delivery system >=50 ML					
A4306	A		Drug delivery system <=5 ML					
A4310	A		Insert tray w/o bag/cath					
A4311	A		Catheter w/o bag 2-way latex					
A4312	A		Cath w/o bag 2-way silicone					
A4313	A		Catheter w/bag 3-way					
A4314	A		Cath w/drainage 2-way latex					
A4315	A		Cath w/drainage 2-way silcne					
A4316	A		Cath w/drainage 3-way					
A4320	A		Irrigation tray					
A4321	A		Cath therapeutic irrig agent					
A4322	A		Irrigation syringe					
A4326	A		Male external catheter					
A4327	A		Fem urinary collect dev cup					
A4328	A		Fem urinary collect pouch					
A4330	A		Stool collection pouch					
A4331	A		Extension drainage tubing					
A4332	A		Lubricant for cath insertion					
A4333	A		Urinary cath anchor device					
A4334	A		Urinary cath leg strap					
A4335	A		Incontinence supply					
A4338	A		Indwelling catheter latex					
A4340	A		Indwelling catheter special					
A4344	A		Cath indw foley 2 way silicn					
A4346	A		Cath indw foley 3 way					
A4348	A		Male ext cath extended wear					
A4349	A		Disposable male external cat					
A4351	A		Straight tip urine catheter					
A4352	A		Coude tip urinary catheter					
A4353	A		Intermittent urinary cath					
A4354	A		Cath insertion tray w/bag					
A4355	A		Bladder irrigation tubing					
A4356	A		Ext ureth clmp or compr dvc					
A4357	A		Bedside drainage bag					
A4358	A		Urinary leg or abdomen bag					
A4359	A		Urinary suspensory w/o leg b					
A4361	A		Ostomy face plate					
A4362	A		Solid skin barrier					
A4364	A		Adhesive, liquid or equal					
A4365	A		Adhesive remover wipes					
A4366	A		Ostomy vent					
A4367	A		Ostomy belt					
A4368	A		Ostomy filter					
A4369	A		Skin barrier liquid per oz					
A4371	A		Skin barrier powder per oz					
A4372	A		Skin barrier solid 4x4 equiv					
A4373	A		Skin barrier with flange					
A4375	A		Drainable plastic pch w fcpl					
A4376	A		Drainable rubber pch w fcplt					
A4377	A		Drainable plstic pch w/o fp					
A4378	A		Drainable rubber pch w/o fp					
A4379	A		Urinary plastic pouch w fcpl					
A4380	A		Urinary rubber pouch w fcplt					
A4381	A		Urinary plastic pouch w/o fp					
A4382	A		Urinary hvy plstc pch w/o fp					
A4383	A		Urinary rubber pouch w/o fp					
A4384	A		Ostomy faceplt/silicone ring					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4385	A		Ost skn barrier sld ext wear					
A4387	A		Ost clsd pouch w att st barr					
A4388	A		Drainable pch w ex wear barr					
A4389	A		Drainable pch w st wear barr					
A4390	A		Drainable pch ex wear convex					
A4391	A		Urinary pouch w ex wear barr					
A4392	A		Urinary pouch w st wear barr					
A4393	A		Urine pch w ex wear bar conv					
A4394	A		Ostomy pouch liq deodorant					
A4395	A		Ostomy pouch solid deodorant					
A4396	A		Peristomal hernia supprt blt					
A4397	A		Irrigation supply sleeve					
A4398	A		Ostomy irrigation bag					
A4399	A		Ostomy irrig cone/cath w brs					
A4400	A		Ostomy irrigation set					
A4402	A		Lubricant per ounce					
A4404	A		Ostomy ring each					
A4405	A		Nonpectin based ostomy paste					
A4406	A		Pectin based ostomy paste					
A4407	A		Ext wear ost skn barr <=4sq÷					
A4408	A		Ext wear ost skn barr >4sq÷					
A4409	A		Ost skn barr w flng <=4 sq÷					
A4410	A		Ost skn barr w flng >4sq÷					
A4413	A		2 pc drainable ost pouch					
A4414	A		Ostomy sknbarr w flng <=4sq÷					
A4415	A		Ostomy skn barr w flng >4sq÷					
A4416	A		Ost pch clsd w barrier/filtr					
A4417	A		Ost pch w bar/bltinconv/fltr					
A4418	A		Ost pch clsd w/o bar w filtr					
A4419	A		Ost pch for bar w flange/flt					
A4420	A		Ost pch clsd for bar w lk fl					
A4421	E		Ostomy supply misc					
A4422	A		Ost pouch absorbent material					
A4423	A		Ost pch for bar w lk fl/fltr					
A4424	A		Ost pch drain w bar & filter					
A4425	A		Ost pch drain for barrier fl					
A4426	A		Ost pch drain 2 piece system					
A4427	A		Ost pch drain/barr lk flng/f					
A4428	A		Urine ost pouch w faucet/tap					
A4429	A		Urine ost pch bar w lock fln					
A4430	A		Ost pch urine w lock flng/ft					
A4431	A		Urine ost pch bar w lock fln					
A4432	A		Ost pch urine w lock flng/ft					
A4433	A		Urine ost pch bar w lock fln					
A4434	A		Ost pch urine w lock flng/ft					
A4450	A		Non-waterproof tape					
A4452	A		Waterproof tape					
A4455	A		Adhesive remover per ounce					
A4458	E		Reusable enema bag					
A4462	A		Abdmnl drssng holder/binder					
A4465	A		Non-elastic extremity binder					
A4470	A		Gravlee jet washer					
A4480	A		Vabra aspirator					
A4481	A		Tracheostoma filter					
A4483	A		Moisture exchanger					
A4490	E		Above knee surgical stocking					
A4495	E		Thigh length surg stocking					
A4500	E		Below knee surgical stocking					
A4510	E		Full length surg stocking					
A4520	E		Incontinence garment anytype					
A4550	B		Surgical trays					
A4554	E		Disposable underpads					
A4555	E		Disposable underpad small					
A4556	Y		Electrodes, pair					
A4557	Y		Lead wires, pair					
A4558	Y		Conductive paste or gel					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4561	N		Pessary rubber, any type					
A4562	N		Pessary, non rubber,any type					
A4565	A		Slings					
A4570	E		Splint					
A4575	E		Hyperbaric o2 chamber disps					
A4580	E		Cast supplies (plaster)					
A4590	E		Special casting material					
A4595	Y		TENS suppl 2 lead per month					
A4605	Y		Trach suction cath close sys					
A4606	A		Oxygen probe used w oximeter					
A4608	Y		Transtracheal oxygen cath					
A4611	Y		Heavy duty battery					
A4612	Y		Battery cables					
A4613	Y		Battery charger					
A4614	A		Hand-held PEFR meter					
A4615	Y		Cannula nasal					
A4616	Y		Tubing (oxygen) per foot					
A4617	Y		Mouth piece					
A4618	Y		Breathing circuits					
A4619	Y		Face tent					
A4620	Y		Variable concentration mask					
A4623	A		Tracheostomy inner cannula					
A4624	Y		Tracheal suction tube					
A4625	A		Trach care kit for new trach					
A4626	A		Tracheostomy cleaning brush					
A4627	E		Spacer bag/reservoir					
A4628	Y		Oropharyngeal suction cath					
A4629	A		Tracheostomy care kit					
A4630	Y		Repl bat t.e.n.s. own by pt					
A4632	Y		Infus pump rplcemnt battery					
A4633	Y		Uvl replacement bulb					
A4634	A		Replacement bulb th lightbox					
A4635	Y		Underarm crutch pad					
A4636	Y		Handgrip for cane etc					
A4637	Y		Repl tip cane/crutch/walker					
A4638	Y		Repl batt pulse gen sys					
A4639	Y		Infrared ht sys replcmnt pad					
A4640	Y		Alternating pressure pad					
A4641	N		Diagnostic imaging agent					
A4642	H		Satumomab pendetide per dose	0704				
A4643	B		High dose contrast MRI					
A4644	B		Contrast 100-199 MGs iodine					
A4645	B		Contrast 200-299 MGs iodine					
A4646	B		Contrast 300-399 MGs iodine					
A4647	B		Supp- paramagnetic contr mat					
A4649	A		Surgical supplies					
A4651	A		Calibrated microcap tube					
A4652	A		Microcapillary tube sealant					
A4653	A		PD catheter anchor belt					
A4656	A		Dialysis needle					
A4657	A		Dialysis syringe w/wo needle					
A4660	A		Sphyg/bp app w cuff and stet					
A4663	A		Dialysis blood pressure cuff					
A4670	E		Automatic bp monitor, dial					
A4671	B		Disposable cycler set					
A4672	B		Drainage ext line, dialysis					
A4673	B		Ext line w easy lock connect					
A4674	B		Chem/antisept solution, 8oz					
A4680	A		Activated carbon filter, ea					
A4690	A		Dialyzer, each					
A4706	A		Bicarbonate conc sol per gal					
A4707	A		Bicarbonate conc pow per pac					
A4708	A		Acetate conc sol per gallon					
A4709	A		Acid conc sol per gallon					
A4714	A		Treated water per gallon					
A4719	A		÷Y set÷ tubing					

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CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4720	A		Dialysat sol fld vol > 249cc					
A4721	A		Dialysat sol fld vol > 999cc					
A4722	A		Dialys sol fld vol > 1999cc					
A4723	A		Dialys sol fld vol > 2999cc					
A4724	A		Dialys sol fld vol > 3999cc					
A4725	A		Dialys sol fld vol > 4999cc					
A4726	A		Dialys sol fld vol > 5999cc					
A4728	B		Dialysate solution, non-dex					
A4730	A		Fistula cannulation set, ea					
A4736	A		Topical anesthetic, per gram					
A4737	A		Inj anesthetic per 10 ml					
A4740	A		Shunt accessory					
A4750	A		Art or venous blood tubing					
A4755	A		Comb art/venous blood tubing					
A4760	A		Dialysate sol test kit, each					
A4765	A		Dialysate conc pow per pack					
A4766	A		Dialysate conc sol add 10 ml					
A4770	A		Blood collection tube/vacuum					
A4771	A		Serum clotting time tube					
A4772	A		Blood glucose test strips					
A4773	A		Occult blood test strips					
A4774	A		Ammonia test strips					
A4802	A		Protamine sulfate per 50 mg					
A4860	A		Disposable catheter tips					
A4870	A		Plumb/elec wk hm hemo equip					
A4890	A		Repair/maint cont hemo equip					
A4911	A		Drain bag/bottle					
A4913	A		Misc dialysis supplies noc					
A4918	A		Venous pressure clamp					
A4927	A		Non-sterile gloves					
A4928	A		Surgical mask					
A4929	A		Tourniquet for dialysis, ea					
A4930	A		Sterile, gloves per pair					
A4931	A		Reusable oral thermometer					
A4932	E		Reusable rectal thermometer					
A5051	A		Pouch clsd w barr attached					
A5052	A		Clsd ostomy pouch w/o barr					
A5053	A		Clsd ostomy pouch faceplate					
A5054	A		Clsd ostomy pouch w/flange					
A5055	A		Stoma cap					
A5061	A		Pouch drainable w barrier at					
A5062	A		Drnble ostomy pouch w/o barr					
A5063	A		Drain ostomy pouch w/flange					
A5071	A		Urinary pouch w/barrier					
A5072	A		Urinary pouch w/o barrier					
A5073	A		Urinary pouch on barr w/flng					
A5081	A		Continent stoma plug					
A5082	A		Continent stoma catheter					
A5093	A		Ostomy accessory convex inse					
A5102	A		Bedside drain btl w/wo tube					
A5105	A		Urinary suspensory					
A5112	A		Urinary leg bag					
A5113	A		Latex leg strap					
A5114	A		Foam/fabric leg strap					
A5119	A		Skin barrier wipes box pr 50					
A5121	A		Solid skin barrier 6x6					
A5122	A		Solid skin barrier 8x8					
A5126	A		Disk/foam pad +or- adhesive					
A5131	A		Appliance cleaner					
A5200	A		Percutaneous catheter anchor					
A5500	Y		Diab shoe for density insert					
A5501	Y		Diabetic custom molded shoe					
A5503	Y		Diabetic shoe w/roller/rockr					
A5504	Y		Diabetic shoe with wedge					
A5505	Y		Diab shoe w/metatarsal bar					
A5506	Y		Diabetic shoe w/off set heel					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A5507	Y		Modification diabetic shoe					
A5508	Y		Diabetic deluxe shoe					
A5509	E		Direct heat form shoe insert					
A5510	E		Compression form shoe insert					
A5511	E		Custom fab molded shoe inser					
A6000	E		Wound warming wound cover					
A6010	A		Collagen based wound filler					
A6011	A		Collagen gel/paste wound fil					
A6021	A		Collagen dressing <=16 sq in					
A6022	A		Collagen drsg>6<=48 sq in					
A6023	A		Collagen dressing >48 sq in					
A6024	A		Collagen dsg wound filler					
A6025	E		Silicone gel sheet, each					
A6154	A		Wound pouch each					
A6196	A		Alginate dressing <=16 sq in					
A6197	A		Alginate drsg >16 <=48 sq in					
A6198	A		alginate dressing > 48 sq in					
A6199	A		Alginate drsg wound filler					
A6200	A		Compos drsg <=16 no border					
A6201	A		Compos drsg >16<=48 no bdr					
A6202	A		Compos drsg >48 no border					
A6203	A		Composite drsg <= 16 sq in					
A6204	A		Composite drsg >16<=48 sq in					
A6205	A		Composite drsg > 48 sq in					
A6206	A		Contact layer <= 16 sq in					
A6207	A		Contact layer >16<= 48 sq in					
A6208	A		Contact layer > 48 sq in					
A6209	A		Foam drsg <=16 sq in w/o bdr					
A6210	A		Foam drg >16<=48 sq in w/o b					
A6211	A		Foam drg > 48 sq in w/o brdr					
A6212	A		Foam drg <=16 sq in w/border					
A6213	A		Foam drg >16<=48 sq in w/bdr					
A6214	A		Foam drg > 48 sq in w/border					
A6215	A		Foam dressing wound filler					
A6216	A		Non-sterile gauze<=16 sq in					
A6217	A		Non-sterile gauze>16<=48 sq					
A6218	A		Non-sterile gauze > 48 sq in					
A6219	A		Gauze <= 16 sq in w/border					
A6220	A		Gauze >16 <=48 sq in w/bordr					
A6221	A		Gauze > 48 sq in w/border					
A6222	A		Gauze <=16 in no w/sal w/o b					
A6223	A		Gauze >16<=48 no w/sal w/o b					
A6224	A		Gauze > 48 in no w/sal w/o b					
A6228	A		Gauze <= 16 sq in water/sal					
A6229	A		Gauze >16<=48 sq in watr/sal					
A6230	A		Gauze > 48 sq in water/salne					
A6231	A		Hydrogel dsg<=16 sq in					
A6232	A		Hydrogel dsg>16<=48 sq in					
A6233	A		Hydrogel dressing >48 sq in					
A6234	A		Hydrocolld drg <=16 w/o bdr					
A6235	A		Hydrocolld drg >16<=48 w/o b					
A6236	A		Hydrocolld drg > 48 in w/o b					
A6237	A		Hydrocolld drg <=16 in w/bdr					
A6238	A		Hydrocolld drg >16<=48 w/bdr					
A6239	A		Hydrocolld drg > 48 in w/bdr					
A6240	A		Hydrocolld drg filler paste					
A6241	A		Hydrocolloid drg filler dry					
A6242	A		Hydrogel drg <=16 in w/o bdr					
A6243	A		Hydrogel drg >16<=48 w/o bdr					
A6244	A		Hydrogel drg >48 in w/o bdr					
A6245	A		Hydrogel drg <= 16 in w/bdr					
A6246	A		Hydrogel drg >16<=48 in w/b					
A6247	A		Hydrogel drg > 48 sq in w/b					
A6248	A		Hydrogel drsg gel filler					
A6250	A		Skin seal protect moisturizr					
A6251	A		Absorpt drg <=16 sq in w/o b					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A6252	A		Absorpt drg >16 <=48 w/o bdr					
A6253	A		Absorpt drg > 48 sq in w/o b					
A6254	A		Absorpt drg <=16 sq in w/bdr					
A6255	A		Absorpt drg >16<=48 in w/bdr					
A6256	A		Absorpt drg > 48 sq in w/bdr					
A6257	A		Transparent film <= 16 sq in					
A6258	A		Transparent film >16<=48 in					
A6259	A		Transparent film > 48 sq in					
A6260	A		Wound cleanser any type/size					
A6261	A		Wound filler gel/paste /oz					
A6262	A		Wound filler dry form / gram					
A6266	A		Impreg gauze no h20/sal/yard					
A6402	A		Sterile gauze <= 16 sq in					
A6403	A		Sterile gauze>16 <= 48 sq in					
A6404	A		Sterile gauze > 48 sq in					
A6407	A		Packing strips, non-impreg					
A6410	A		Sterile eye pad					
A6411	A		Non-sterile eye pad					
A6412	E		Occlusive eye patch					
A6441	A		Pad band w>=3÷ <5÷/yd					
A6442	A		Conform band n/s w<3÷/yd					
A6443	A		Conform band n/s w>=3÷<5÷/yd					
A6444	A		Conform band n/s w>=5÷/yd					
A6445	A		Conform band s w <3÷/yd					
A6446	A		Conform band s w>=3÷ <5÷/yd					
A6447	A		Conform band s w >=5÷/yd					
A6448	A		Lt compres band <3÷/yd					
A6449	A		Lt compres band >=3÷ <5÷/yd					
A6450	A		Lt compres band >=5÷/yd					
A6451	A		Mod compres band w>=3÷<5÷/yd					
A6452	A		High compres band w>=3÷<5÷yd					
A6453	A		Self-adher band w <3÷/yd					
A6454	A		Self-adher band w>=3÷ <5÷/yd					
A6455	A		Self-adher band >=5÷/yd					
A6456	A		Zinc paste band w >=3÷<5÷/yd					
A6501	A		Compres burngarment bodysuit					
A6502	A		Compres burngarment chinstrp					
A6503	A		Compres burngarment facehood					
A6504	A		Cmprsburngarment glove-wrist					
A6505	A		Cmprsburngarment glove-elbow					
A6506	A		Cmprsburngrmnt glove-axilla					
A6507	A		Cmprs burngarment foot-knee					
A6508	A		Cmprs burngarment foot-thigh					
A6509	A		Compres burn garment jacket					
A6510	A		Compres burn garment leotard					
A6511	A		Compres burn garment panty					
A6512	A		Compres burn garment, noc					
A6550	Y		Neg pres wound ther drsg set					
A6551	Y		Neg press wound ther canistr					
A7000	Y		Disposable canister for pump					
A7001	Y		Nondisposable pump canister					
A7002	Y		Tubing used w suction pump					
A7003	Y		Nebulizer administration set					
A7004	Y		Disposable nebulizer sml vol					
A7005	Y		Nondisposable nebulizer set					
A7006	Y		Filtered nebulizer admin set					
A7007	Y		Lg vol nebulizer disposable					
A7008	Y		Disposable nebulizer prefill					
A7009	Y		Nebulizer reservoir bottle					
A7010	Y		Disposable corrugated tubing					
A7011	Y		Nondispos corrugated tubing					
A7012	Y		Nebulizer water collec devic					
A7013	Y		Disposable compressor filter					
A7014	Y		Compressor nondispos filter					
A7015	Y		Aerosol mask used w nebulize					
A7016	Y		Nebulizer dome & mouthpiece					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A7017	Y		Nebulizer not used w oxygen					
A7018	Y		Water distilled w/nebulizer					
A7025	Y		Replace chest compress vest					
A7026	Y		Replace chst cmprss sys hose					
A7030	Y		CPAP full face mask					
A7031	Y		Replacement facemask interfa					
A7032	Y		Replacement nasal cushion					
A7033	Y		Replacement nasal pillows					
A7034	Y		Nasal application device					
A7035	Y		Pos airway press headgear					
A7036	Y		Pos airway press chinstrap					
A7037	Y		Pos airway pressure tubing					
A7038	Y		Pos airway pressure filter					
A7039	Y		Filter, non disposable w pap					
A7040	A		One way chest drain valve					
A7041	A		Water seal drain container					
A7042	A		Implanted pleural catheter					
A7043	A		Vacuum drainagebottle/tubing					
A7044	Y		PAP oral interface					
A7045	Y		Repl exhalation port for PAP					
A7046	Y		Repl water chamber, PAP dev					
A7501	A		Tracheostoma valve w diaphra					
A7502	A		Replacement diaphragm/fplate					
A7503	A		HMES filter holder or cap					
A7504	A		Tracheostoma HMES filter					
A7505	A		HMES or trach valve housing					
A7506	A		HMES/trachvalve adhesivedisk					
A7507	A		Integrated filter & holder					
A7508	A		Housing & Integrated Adhesiv					
A7509	A		Heat & moisture exchange sys					
A7520	A		Trach/laryn tube non-cuffed					
A7521	A		Trach/laryn tube cuffed					
A7522	A		Trach/laryn tube stainless					
A7523	A		Tracheostomy shower protect					
A7524	A		Tracheostoma stent/stud/bttn					
A7525	A		Tracheostomy mask					
A7526	A		Tracheostomy tube collar					
A7527	A		Trach/laryn tube plug/stop					
A9150	B		Misc/exper non-prescript dru					
A9152	E		Single vitamin nos					
A9153	E		Multi-vitamin nos					
A9180	E		Lice treatment, topical					
A9270	E		Non-covered item or service					
A9280	E		Alert device, noc					
A9300	E		Exercise equipment					
A9500	H		Technetium TC 99m sestamibi	1600				
A9502	H		Technetium TC99M tetrofosmin	0705				
A9503	N		Technetium TC 99m medronate					
A9504	N		Technetium tc 99m apcitide					
A9505	H		Thallous chloride TL 201/mci	1603				
A9507	H		Indium/111 capromab pendetid	1604				
A9508	H		Iobenguane sulfate I-131, pe	1045				
A9510	H		Technetium TC99m Disofenin	9146				
A9511	H		Technetium TC 99m depreotide	9147				
A9512	N		Technetium tc99m pertechnetate					
A9513	N		Technetium tc-99m mebrofenin					
A9514	N		Technetium tc99m pyrophosphate					
A9515	N		Technetium tc-99m pentetate					
A9516	H		I-123 sodium iodide capsule	9148				
A9517	H		Th I131 so iodide cap millic	1064				
A9519	N		Technetium tc-99m macroag albu					
A9520	N		Technetium tc-99m sulfur clld					
A9521	H		Technetium tc-99m exametazine	1096				
A9522	B		Indium 111i britumomabtiuxetan					
A9523	B		Yttrium 90i britumomabtiuxetan					
A9524	H		Iodinated I-131 serumalbumin	9100				

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A9525	E		Low/iso-osmolar contrast mat					
A9526	H		Ammonia N-13, per dose	0737				
A9528	H		Dx I131 so iodide cap millic	1088				
A9529	H		Dx I131 so iodide sol millic	1065				
A9530	H		Th I131 so iodide sol millic	1150				
A9531	H		Dx I131 so iodide microcurie	9149				
A9532	H		I-125 serum albumin micro	9150				
A9533	B		I-131 tositumomab diagnostic					
A9534	B		I-131 tositumomab therapeut					
A9600	H		Strontium-89 chloride	0701				
A9605	H		Samarium sm153 lexidronamm	0702				
A9699	N		Noc therapeutic radiopharm					
A9700	B		Echocardiography Contrast					
A9900	A		Supply/accessory/service					
A9901	A		Delivery/set up/dispensing					
A9999	Y		DME supply or accessory, nos					
B4034	A		Enter feed supkit syr by day					
B4035	A		Enteral feed supp pump per d					
B4036	A		Enteral feed sup kit grav by					
B4081	A		Enteral ng tubing w/ stylet					
B4082	A		Enteral ng tubing w/o stylet					
B4083	A		Enteral stomach tube levine					
B4086	A		Gastrostomy/jejunostomy tube					
B4100	E		Food thickener oral					
B4102	Y		EF adult fluids and electro					
B4103	Y		EF ped fluid and electrolyte					
B4104	E		Additive for enteral formula					
B4149	Y		EF blenderized foods					
B4150	A		Enteral formulae category i					
B4152	A		Enteral formulae category ii					
B4153	A		Enteral formulae category III					
B4154	A		Enteral formulae category IV					
B4155	A		Enteral formulae category v					
B4157	Y		EF special metabolic inherit					
B4158	Y		EF ped complete intact nut					
B4159	Y		EF ped complete soy based					
B4160	Y		EF ped calorie dense > / =0.7kc					
B4161	Y		EF ped hydrolyzed/amino acid					
B4162	Y		EF ped specmetabolic inherit					
B4164	A		Parenteral 50% dextrose solu					
B4168	A		Parenteral sol amino acid 3					
B4172	A		Parenteral sol amino acid 5					
B4176	A		Parenteral sol amino acid 7-					
B4178	A		Parenteral sol amino acid >					
B4180	A		Parenteral sol carb > 50%					
B4184	A		Parenteral sol lipids 10%					
B4186	A		Parenteral sol lipids 20%					
B4189	A		Parenteral sol amino acid &					
B4193	A		Parenteral sol 52-73 gm prot					
B4197	A		Parenteral sol 74-100 gm pro					
B4199	A		Parenteral sol > 100gm prote					
B4216	A		Parenteral nutrition additiv					
B4220	A		Parenteral supply kit premix					
B4222	A		Parenteral supply kit homemi					
B4224	A		Parenteral administration ki					
B5000	A		Parenteral sol renal-amirosy					
B5100	A		Parenteral sol hepatic-fream					
B5200	A		Parenteral sol stres-brnch c					
B9000	A		Enter infusion pump w/o alrm					
B9002	A		Enteral infusion pump w/ ala					
B9004	A		Parenteral infus pump portab					
B9006	A		Parenteral infus pump statio					
B9998	A		Enteral supp not otherwise c					
B9999	A		Parenteral supp not othrws c					
C1079	N		CO 57/58 per 0.5 uCi					
C1080	H		I-131 tositumomab, dx	1080				

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C1081	H		I-131 tositumomab, tx	1081				
C1082	H		In-111 ibritumomab tiuxetan	9118				
C1083	H		Yttrium 90 ibritumomab tiuxe	9117				
C1091	H		IN111 oxyquinoline,per 0.5 mCi	1091				
C1092	H		IN 111 pentetate per 0.5 mCi	1092				
C1093	H		TC99M fanolesomab	1093				
C1122	H		Tc 99M ARCITUMOMAB PER VIAL	9151				
C1178	K		BUSULFAN IV, 6 Mg	1178	0.2851	$16.92		$3.38
C1200	N		TC 99M Sodium Glucoheptonat					
C1201	H		TC 99M SUCCIMER, PER Vial	1201				
C1300	S		HYPERBARIC Oxygen	0659	1.5473	$91.82		$18.36
C1305	K		Apligraf, 44cm2	1305	12.9222	$766.84		$153.37
C1713	N		Anchor/screw bn/bn,tis/bn					
C1714	N		Cath, trans atherectomy, dir					
C1715	N		Brachytherapy needle					
C1716	H		Brachytx source, Gold 198	1716				
C1717	H		Brachytx source, HDR Ir-192	1717				
C1718	H		Brachytx source, Iodine 125	1718				
C1719	H		Brachytx sour,Non-HDR Ir-192	1719				
C1720	H		Brachytx sour, Palladium 103	1720				
C1721	N		AICD, dual chamber					
C1722	N		AICD, single chamber					
C1724	N		Cath, trans atherec,rotation					
C1725	N		Cath, translumin non-laser					
C1726	N		Cath, bal dil, non-vascular					
C1727	N		Cath, bal tis dis, non-vas					
C1728	N		Cath, brachytx seed adm					
C1729	N		Cath, drainage					
C1730	N		Cath, EP, 19 or few elect					
C1731	N		Cath, EP, 20 or more elec					
C1732	N		Cath, EP, diag/abl, 3D/vect					
C1733	N		Cath, EP, othr than cool-tip					
C1750	N		Cath, hemodialysis,long-term					
C1751	N		Cath, inf, per/cent/midline					
C1752	N		Cath,hemodialysis,short-term					
C1753	N		Cath, intravas ultrasound					
C1754	N		Catheter, intradiscal					
C1755	N		Catheter, intraspinal					
C1756	N		Cath, pacing, transesoph					
C1757	N		Cath, thrombectomy/embolect					
C1758	N		Catheter, ureteral					
C1759	N		Cath, intra echocardiography					
C1760	N		Closure dev, vasc					
C1762	N		Conn tiss, human(inc fascia)					
C1763	N		Conn tiss, non-human					
C1764	N		Event recorder, cardiac					
C1765	N		Adhesion barrier					
C1766	N		Intro/sheath,strble,non-peel					
C1767	N		Generator, neurostim, imp					
C1768	N		Graft, vascular					
C1769	N		Guide wire					
C1770	N		Imaging coil, MR, insertable					
C1771	N		Rep dev, urinary, w/sling					
C1772	N		Infusion pump, programmable					
C1773	N		Ret dev, insertable					
C1775	H		FDG, per dose (4-40 mCi/ml)	1775				
C1776	N		Joint device (implantable)					
C1777	N		Lead, AICD, endo single coil					
C1778	N		Lead, neurostimulator					
C1779	N		Lead, pmkr, transvenous VDD					
C1780	N		Lens, intraocular (new tech)					
C1781	N		Mesh (implantable)					
C1782	N		Morcellator					
C1783	N		Ocular imp, aqueous drain de					
C1784	N		Ocular dev, intraop, det ret					
C1785	N		Pmkr, dual, rate-resp					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C1786	N		Pmkr, single, rate-resp					
C1787	N		Patient progr, neurostim					
C1788	N		Port, indwelling, imp					
C1789	N		Prosthesis, breast, imp					
C1813	N		Prosthesis, penile, inflatab					
C1814	N		Retinal tamp, silicone oil					
C1815	N		Pros, urinary sph, imp					
C1816	N		Receiver/transmitter, neuro					
C1817	N		Septal defect imp sys					
C1818	N		Integrated keratoprosthesis					
C1819	N		Tissue local excision					
C1874	N		Stent, coated/cov w/del sys					
C1875	N		Stent, coated/cov w/o del sy					
C1876	N		Stent, non-coa/non-cov w/del					
C1877	N		Stent, non-coat/cov w/o del					
C1878	N		Matrl for vocal cord					
C1879	N		Tissue marker, implantable					
C1880	N		Vena cava filter					
C1881	N		Dialysis access system					
C1882	N		AICD, other than sing/dual					
C1883	N		Adapt/ext, pacing/neuro lead					
C1884	N		Embolization Protect syst					
C1885	N		Cath, translumin angio laser					
C1887	N		Catheter, guiding					
C1888	N		Endovas non-cardiac abl cath					
C1891	N		Infusion pump,non-prog, perm					
C1892	N		Intro/sheath,fixed,peel-away					
C1893	N		Intro/sheath, fixed,non-peel					
C1894	N		Intro/sheath, non-laser					
C1895	N		Lead, AICD, endo dual coil					
C1896	N		Lead, AICD, non sing/dual					
C1897	N		Lead, neurostim test kit					
C1898	N		Lead, pmkr, other than trans					
C1899	N		Lead, pmkr/AICD combination					
C1900	N		Lead coronary venous					
C2614	N		Probe, perc lumb disc					
C2615	N		Sealant, pulmonary, liquid					
C2616	H		Brachytx source, Yttrium-90	2616				
C2617	N		Stent, non-cor, tem w/o del					
C2618	N		Probe, cryoablation					
C2619	N		Pmkr, dual, non rate-resp					
C2620	N		Pmkr, single, non rate-resp					
C2621	N		Pmkr, other than sing/dual					
C2622	N		Prosthesis, penile, non-inf					
C2625	N		Stent, non-cor, tem w/del sy					
C2626	N		Infusion pump, non-prog,temp					
C2627	N		Cath, suprapubic/cystoscopic					
C2628	N		Catheter, occlusion					
C2629	N		Intro/sheath, laser					
C2630	N		Cath, EP, cool-tip					
C2631	N		Rep dev, urinary, w/o sling					
C2632	H		Brachytx sol, I-125, per mCi	2632				
C2633	H		Brachytx source, Cesium-131	2633				
C2634	H		Brachytx source, HA, I-125	2634				
C2635	H		Brachytx source, HA, P-103	2635				
C2636	H		Brachytx linear source, P-10	2636				
C8900*	S		MRA w/cont, abd	0284	6.4201	$380.99	$152.39	$76.20
C8901*	S		MRA w/o cont, abd	0336	6.0742	$360.46	$144.18	$72.09
C8902*	S		MRA w/o fol w/cont, abd	0337	8.7945	$521.89	$208.75	$104.38
C8903*	S		MRI w/cont, breast, uni	0284	6.4201	$380.99	$152.39	$76.20
C8904*	S		MRI w/o cont, breast, uni	0336	6.0742	$360.46	$144.18	$72.09
C8905*	S		MRI w/o fol w/cont, brst, un	0337	8.7945	$521.89	$208.75	$104.38
C8906*	S		MRI w/cont, breast, bi	0284	6.4201	$380.99	$152.39	$76.20
C8907*	S		MRI w/o cont, breast, bi	0336	6.0742	$360.46	$144.18	$72.09
C8908*	S		MRI w/o fol w/cont, breast,	0337	8.7945	$521.89	$208.75	$104.38
C8909*	S		MRA w/cont, chest	0284	6.4201	$380.99	$152.39	$76.20

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C8910*	S		MRA w/o cont, chest	0336	6.0742	$360.46	$144.18	$72.09
C8911*	S		MRA w/o fol w/cont, chest	0337	8.7945	$521.89	$208.75	$104.38
C8912*	S		MRA w/cont, lwr ext	0284	6.4201	$380.99	$152.39	$76.20
C8913*	S		MRA w/o cont, lwr ext	0336	6.0742	$360.46	$144.18	$72.09
C8914*	S		MRA w/o fol w/cont, lwr ext	0337	8.7945	$521.89	$208.75	$104.38
C8918*	S		MRA w/cont, pelvis	0284	6.4201	$380.99	$152.39	$76.20
C8919*	S		MRA w/o cont, pelvis	0336	6.0742	$360.46	$144.18	$72.09
C8920*	S		MRA w/o fol w/cont, pelvis	0337	8.7945	$521.89	$208.75	$104.38
C9000	H		Na chromateCr51, per 0.25mCi	9130				
C9003	K		Palivizumab, per 50 mg	9003	4.1491	$246.22		$49.24
C9007	K		Baclofen Intrathecal kit-1am	9152	0.8562	$50.81		$10.16
C9008	K		Baclofen Refill Kit-500mcg	9008	0.2447	$14.52		$2.90
C9009	K		Baclofen Refill Kit-2000mcg	9009	0.7209	$42.78		$8.56
C9013	N		Co 57 cobaltous chloride					
C9102	H		51 Na Chromate, 50mCi	9132				
C9103	H		Na Iothalamate I-125, 10 uCi	9153				
C9105	K		Hep B imm glob, per 1 ml	9105	1.8813	$111.64		$22.33
C9112	D		Perflutren lipid micro, 2ml					
C9113	N		Inj pantoprazole sodium, via					
C9121	K		Injection, argatroban	9121	0.1897	$11.26		$2.25
C9123	K		Transcyte, 247cm2	9123		$719.41		$143.88
C9127	K		Paclitaxel protein pr	9127		$8.59		$1.72
C9128	K		Inj pegaptanib sodium	9128		$1,074.27		$214.85
C9200	K		Orcel, 36 cm2	9200	2.6893	$159.59		$31.92
C9201	K		Dermagraft, 37.5cm2	9201	6.2066	$368.32		$73.66
C9202	D		Octafluoropropane					
C9203	D		Perflexane lipid micro					
C9205	K		Oxaliplatin	9205		$84.06		$16.81
C9206	K		Integra, per cm2	9206		$9.23		$1.85
C9211	K		Inj, alefacept, IV	9211		$571.01		$114.20
C9212	K		Inj, alefacept, IM	9212		$402.00		$80.40
C9218	K		Injection, Azacitidine	9218		$4.03		$0.81
C9220	G		Sodium hyaluronate	9220		$203.84		$40.77
C9221	G		Graftjacket Reg Matrix	9221		$1,234.36		$246.87
C9222	G		Graftjacket SftTis	9222		$890.74		$178.15
C9223	D		Inj adenosine, tx dx					
C9399	A		Unclass drugs/biologicals					
C9400	D		Thallous chloride, brand					
C9401	D		Strontium-89 chloride, brand					
C9402	D		Th I131 so iodide cap, brand					
C9403	D		Dx I131 so iodide cap, brand					
C9404	D		Dx I131 so iodide sol, brand					
C9405	D		Th I131 so iodide sol, brand					
C9410	D		Dexrazoxane HCl inj, brand					
C9411	D		Pamidronate disodium, brand					
C9413	D		Na hyaluronate bran					
C9414	D		Etoposide oral, brand					
C9415	D		Doxorubic hcl chemo, brand					
C9417	D		Bleomycin sulfate inj, brand					
C9418	D		Cisplatin inj, brand					
C9419	D		Inj cladribine, brand					
C9420	D		Cyclophosphamide inj, brand					
C9421	D		Cyclophosphamide lyo, brand					
C9422	D		Cytarabine hcl inj, brand					
C9423	D		Dacarbazine inj, brand					
C9424	D		Daunorubicin, brand					
C9425	D		Etoposide inj, brand					
C9426	D		Floxuridine inj, brand					
C9427	D		Ifosfomide inj, brand					
C9428	D		Mesna injection, brand					
C9429	D		Idarubicin hcl inj, brand					
C9430	D		Leuprolide acetate bran					
C9431	D		Paclitaxel inj, brand					
C9432	D		Mitomycin inj, brand					
C9433	D		Thiotepa inj, brand					
C9435	D		Gonadorelin hydroch, brand					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C9436	D		Azathioprine parenteral,brnd					
C9437	D		Carmus bischl nitro inj					
C9438	D		Cyclosporine oral, brand					
C9439	D		Diethylstilbestrol injection					
C9440	D		Vinorelbine tar,brand					
C9704	T		Inj inert subs upper GI	1556		$1,750.00		$350.00
C9713	T		Non-contact laser vap prosta	0429	42.3147	$2,511.08		$502.22
C9716	S		RF Energy to Anus	1519		$1,750.00		$350.00
C9718	T		Kyphoplasty, first vertebra	0051	36.5271	$2,167.63		$433.53
C9719	T		Kyphoplasty, each addl	0051	36.5271	$2,167.63		$433.53
C9720	T		HE ESW tx, tennis elbow	1547		$850.00		$170.00
C9721	T		HE ESW tx, plantar fasciitis	1547		$850.00		$170.00
C9722	S		KV imaging w/IR tracking	1502		$75.00		$15.00
C9723	S		Dyn IR Perf Img	1502		$75.00		$15.00
C9724	T		EPS gast cardia plic	0422	22.9647	$1,362.79	$448.81	$272.56
D0120	E		Periodic oral evaluation					
D0140	E		Limit oral eval problm focus					
D0150	S		Comprehensve oral evaluation	0330	7.1756	$425.82		$85.16
D0160	E		Extensv oral eval prob focus					
D0170	E		Re-eval,est pt,problem focus					
D0180	E		Comp periodontal evaluation					
D0210	E		Intraor complete film series					
D0220	E		Intraoral periapical first f					
D0230	E		Intraoral periapical ea add					
D0240	S		Intraoral occlusal film	0330	7.1756	$425.82		$85.16
D0250	S		Extraoral first film	0330	7.1756	$425.82		$85.16
D0260	S		Extraoral ea additional film	0330	7.1756	$425.82		$85.16
D0270	S		Dental bitewing single film	0330	7.1756	$425.82		$85.16
D0272	S		Dental bitewings two films	0330	7.1756	$425.82		$85.16
D0274	S		Dental bitewings four films	0330	7.1756	$425.82		$85.16
D0277	S		Vert bitewings-sev to eight	0330	7.1756	$425.82		$85.16
D0290	E		Dental film skull/facial bon					
D0310	E		Dental saliography					
D0320	E		Dental tmj arthrogram incl i					
D0321	E		Dental other tmj films					
D0322	E		Dental tomographic survey					
D0330	E		Dental panoramic film					
D0340	E		Dental cephalometric film					
D0350	E		Oral/facial images					
D0415	E		Bacteriologic study					
D0416	B		Viral culture					
D0421	B		Gen tst suscept oral disease					
D0425	E		Caries susceptibility test					
D0431	B		Diag tst detect mucos abnorm					
D0460	S		Pulp vitality test	0330	7.1756	$425.82		$85.16
D0470	E		Diagnostic casts					
D0472	B		Gross exam, prep & report					
D0473	B		Micro exam, prep & report					
D0474	B		Micro w exam of surg margins					
D0475	B		Decalcification procedure					
D0476	B		Spec stains for microorganis					
D0477	B		Spec stains not for microorg					
D0478	B		Immunohistochemical stains					
D0479	B		Tissue in-situ hybridization					
D0480	B		Cytopath smear prep & report					
D0481	B		Electron microscopy diagnost					
D0482	B		Direct immunofluorescence					
D0483	B		Indirect immunofluorescence					
D0484	B		Consult slides prep elsewher					
D0485	B		Consult inc prep of slides					
D0502	B		Other oral pathology procedu					
D0999	B		Unspecified diagnostic proce					
D1110	E		Dental prophylaxis adult					
D1120	E		Dental prophylaxis child					
D1201	E		Topical fluor w prophy child					
D1203	E		Topical fluor w/o prophy chi					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D1204	E		Topical fluor w/o prophy adu					
D1205	E		Topical fluoride w/ prophy a					
D1310	E		Nutri counsel-control caries					
D1320	E		Tobacco counseling					
D1330	E		Oral hygiene instruction					
D1351	E		Dental sealant per tooth					
D1510	S		Space maintainer fxd unilat	0330	7.1756	$425.82		$85.16
D1515	S		Fixed bilat space maintainer	0330	7.1756	$425.82		$85.16
D1520	S		Remove unilat space maintain	0330	7.1756	$425.82		$85.16
D1525	S		Remove bilat space maintain	0330	7.1756	$425.82		$85.16
D1550	S		Recement space maintainer	0330	7.1756	$425.82		$85.16
D2140	E		Amalgam one surface permanen					
D2150	E		Amalgam two surfaces permane					
D2160	E		Amalgam three surfaces perma					
D2161	E		Amalgam 4 or > surfaces perm					
D2330	E		Resin one surface-anterior					
D2331	E		Resin two surfaces-anterior					
D2332	E		Resin three surfaces-anterio					
D2335	E		Resin 4/> surf or w incis an					
D2390	E		Ant resin-based cmpst crown					
D2391	E		Post 1 srfc resinbased cmpst					
D2392	E		Post 2 srfc resinbased cmpst					
D2393	E		Post 3 srfc resinbased cmpst					
D2394	E		Post >=4srfc resinbase cmpst					
D2410	E		Dental gold foil one surface					
D2420	E		Dental gold foil two surface					
D2430	E		Dental gold foil three surfa					
D2510	E		Dental inlay metalic 1 surf					
D2520	E		Dental inlay metallic 2 surf					
D2530	E		Dental inlay metl 3/more sur					
D2542	E		Dental onlay metallic 2 surf					
D2543	E		Dental onlay metallic 3 surf					
D2544	E		Dental onlay metl 4/more sur					
D2610	E		Inlay porcelain/ceramic 1 su					
D2620	E		Inlay porcelain/ceramic 2 su					
D2630	E		Dental onlay porc 3/more sur					
D2642	E		Dental onlay porcelin 2 surf					
D2643	E		Dental onlay porcelin 3 surf					
D2644	E		Dental onlay porc 4/more sur					
D2650	E		Inlay composite/resin one su					
D2651	E		Inlay composite/resin two su					
D2652	E		Dental inlay resin 3/mre sur					
D2662	E		Dental onlay resin 2 surface					
D2663	E		Dental onlay resin 3 surface					
D2664	E		Dental onlay resin 4/mre sur					
D2710	E		Crown resin laboratory					
D2712	E		Crown 3/4 resin-based compos					
D2720	E		Crown resin w/ high noble me					
D2721	E		Crown resin w/ base metal					
D2722	E		Crown resin w/ noble metal					
D2740	E		Crown porcelain/ceramic subs					
D2750	E		Crown porcelain w/ h noble m					
D2751	E		Crown porcelain fused base m					
D2752	E		Crown porcelain w/ noble met					
D2780	E		Crown 3/4 cast hi noble met					
D2781	E		Crown 3/4 cast base metal					
D2782	E		Crown 3/4 cast noble metal					
D2783	E		Crown 3/4 porcelain/ceramic					
D2790	E		Crown full cast high noble m					
D2791	E		Crown full cast base metal					
D2792	E		Crown full cast noble metal					
D2794	E		Crown-titanium					
D2799	E		Provisional crown					
D2910	E		Dental recement inlay					
D2915	E		Recement cast or prefab post					
D2920	E		Dental recement crown					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D2930	E		Prefab stnlss steel crwn pri					
D2931	E		Prefab stnlss steel crown pe					
D2932	E		Prefabricated resin crown					
D2933	E		Prefab stainless steel crown					
D2934	E		Prefab steel crown primary					
D2940	E		Dental sedative filling					
D2950	E		Core build-up incl any pins					
D2951	E		Tooth pin retention					
D2952	E		Post and core cast + crown					
D2953	E		Each addtnl cast post					
D2954	E		Prefab post/core + crown					
D2955	E		Post removal					
D2957	E		Each addtnl prefab post					
D2960	E		Laminate labial veneer					
D2961	E		Lab labial veneer resin					
D2962	E		Lab labial veneer porcelain					
D2971	E		Add proc construct new crown					
D2975	E		Coping					
D2980	E		Crown repair					
D2999	S		Dental unspec restorative pr	0330	7.1756	$425.82		$85.16
D3110	E		Pulp cap direct					
D3120	E		Pulp cap indirect					
D3220	E		Therapeutic pulpotomy					
D3221	E		Gross pulpal debridement					
D3230	E		Pulpal therapy anterior prim					
D3240	E		Pulpal therapy posterior pri					
D3310	E		Anterior					
D3320	E		Root canal therapy 2 canals					
D3330	E		Root canal therapy 3 canals					
D3331	E		Non-surg tx root canal obs					
D3332	E		Incomplete endodontic tx					
D3333	E		Internal root repair					
D3346	E		Retreat root canal anterior					
D3347	E		Retreat root canal bicuspid					
D3348	E		Retreat root canal molar					
D3351	E		Apexification/recalc initial					
D3352	E		Apexification/recalc interim					
D3353	E		Apexification/recalc final					
D3410	E		Apicoect/perirad surg anter					
D3421	E		Root surgery bicuspid					
D3425	E		Root surgery molar					
D3426	E		Root surgery ea add root					
D3430	E		Retrograde filling					
D3450	E		Root amputation					
D3460	S		Endodontic endosseous implan	0330	7.1756	$425.82		$85.16
D3470	E		Intentional replantation					
D3910	E		Isolation- tooth w rubb dam					
D3920	E		Tooth splitting					
D3950	E		Canal prep/fitting of dowel					
D3999	S		Endodontic procedure	0330	7.1756	$425.82		$85.16
D4210	E		Gingivectomy/plasty per quad					
D4211	E		Gingivectomy/plasty per toot					
D4240	E		Gingival flap proc w/ planin					
D4241	E		Gngvl flap w rootplan 1-3 th					
D4245	E		Apically positioned flap					
D4249	E		Crown lengthen hard tissue					
D4260	S		Osseous surgery per quadrant	0330	7.1756	$425.82		$85.16
D4261	E		Osseous surgl-3teethperquad					
D4263	S		Bone replce graft first site	0330	7.1756	$425.82		$85.16
D4264	S		Bone replce graft each add	0330	7.1756	$425.82		$85.16
D4265	E		Bio mtrls to aid soft/os reg					
D4266	E		Guided tiss regen resorble					
D4267	E		Guided tiss regen nonresorb					
D4268	S		Surgical revision procedure	0330	7.1756	$425.82		$85.16
D4270	S		Pedicle soft tissue graft pr	0330	7.1756	$425.82		$85.16
D4271	S		Free soft tissue graft proc	0330	7.1756	$425.82		$85.16

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D4273	S		Subepithelial tissue graft	0330	7.1756	$425.82		$85.16
D4274	E		Distal/proximal wedge proc					
D4275	E		Soft tissue allograft					
D4276	E		Con tissue w dble ped graft					
D4320	E		Provision splnt intracoronal					
D4321	E		Provisional splint extracoro					
D4341	E		Periodontal scaling & root					
D4342	E		Periodontal scaling 1-3teeth					
D4355	S		Full mouth debridement	0330	7.1756	$425.82		$85.16
D4381	S		Localized chemo delivery	0330	7.1756	$425.82		$85.16
D4910	E		Periodontal maint procedures					
D4920	E		Unscheduled dressing change					
D4999	E		Unspecified periodontal proc					
D5110	E		Dentures complete maxillary					
D5120	E		Dentures complete mandible					
D5130	E		Dentures immediat maxillary					
D5140	E		Dentures immediat mandible					
D5211	E		Dentures maxill part resin					
D5212	E		Dentures mand part resin					
D5213	E		Dentures maxill part metal					
D5214	E		Dentures mandibl part metal					
D5225	E		Maxillary part denture flex					
D5226	E		Mandibular part denture flex					
D5281	E		Removable partial denture					
D5410	E		Dentures adjust cmplt maxil					
D5411	E		Dentures adjust cmplt mand					
D5421	E		Dentures adjust part maxill					
D5422	E		Dentures adjust part mandbl					
D5510	E		Dentur repr broken compl bas					
D5520	E		Replace denture teeth complt					
D5610	E		Dentures repair resin base					
D5620	E		Rep part denture cast frame					
D5630	E		Rep partial denture clasp					
D5640	E		Replace part denture teeth					
D5650	E		Add tooth to partial denture					
D5660	E		Add clasp to partial denture					
D5670	E		Replc tth&acrlc on mtl frmwk					
D5671	E		Replc tth&acrlc mandibular					
D5710	E		Dentures rebase cmplt maxil					
D5711	E		Dentures rebase cmplt mand					
D5720	E		Dentures rebase part maxill					
D5721	E		Dentures rebase part mandbl					
D5730	E		Denture reln cmplt maxil ch					
D5731	E		Denture reln cmplt mand chr					
D5740	E		Denture reln part maxil chr					
D5741	E		Denture reln part mand chr					
D5750	E		Denture reln cmplt max lab					
D5751	E		Denture reln cmplt mand lab					
D5760	E		Denture reln part maxil lab					
D5761	E		Denture reln part mand lab					
D5810	E		Denture interm cmplt maxill					
D5811	E		Denture interm cmplt mandbl					
D5820	E		Denture interm part maxill					
D5821	E		Denture interm part mandbl					
D5850	E		Denture tiss conditn maxill					
D5851	E		Denture tiss condtin mandbl					
D5860	E		Overdenture complete					
D5861	E		Overdenture partial					
D5862	E		Precision attachment					
D5867	E		Replacement of precision att					
D5875	E		Prosthesis modification					
D5899	E		Removable prosthodontic proc					
D5911	S		Facial moulage sectional	0330	7.1756	$425.82		$85.16
D5912	S		Facial moulage complete	0330	7.1756	$425.82		$85.16
D5913	E		Nasal prosthesis					
D5914	E		Auricular prosthesis					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D5915	E		Orbital prosthesis					
D5916	E		Ocular prosthesis					
D5919	E		Facial prosthesis					
D5922	E		Nasal septal prosthesis					
D5923	E		Ocular prosthesis interim					
D5924	E		Cranial prosthesis					
D5925	E		Facial augmentation implant					
D5926	E		Replacement nasal prosthesis					
D5927	E		Auricular replacement					
D5928	E		Orbital replacement					
D5929	E		Facial replacement					
D5931	E		Surgical obturator					
D5932	E		Postsurgical obturator					
D5933	E		Refitting of obturator					
D5934	E		Mandibular flange prosthesis					
D5935	E		Mandibular denture prosth					
D5936	E		Temp obturator prosthesis					
D5937	E		Trismus appliance					
D5951	E		Feeding aid					
D5952	E		Pediatric speech aid					
D5953	E		Adult speech aid					
D5954	E		Superimposed prosthesis					
D5955	E		Palatal lift prosthesis					
D5958	E		Intraoral con def inter plt					
D5959	E		Intraoral con def mod palat					
D5960	E		Modify speech aid prosthesis					
D5982	E		Surgical stent					
D5983	S		Radiation applicator	0330	7.1756	$425.82		$85.16
D5984	S		Radiation shield	0330	7.1756	$425.82		$85.16
D5985	S		Radiation cone locator	0330	7.1756	$425.82		$85.16
D5986	E		Fluoride applicator					
D5987	S		Commissure splint	0330	7.1756	$425.82		$85.16
D5988	E		Surgical splint					
D5999	E		Maxillofacial prosthesis					
D6010	E		Odontics endosteal implant					
D6040	E		Odontics eposteal implant					
D6050	E		Odontics transosteal implnt					
D6053	E		Implnt/abtmnt spprt remv dnt					
D6054	E		Implnt/abtmnt spprt remvprtl					
D6055	E		Implant connecting bar					
D6056	E		Prefabricated abutment					
D6057	E		Custom abutment					
D6058	E		Abutment supported crown					
D6059	E		Abutment supported mtl crown					
D6060	E		Abutment supported mtl crown					
D6061	E		Abutment supported mtl crown					
D6062	E		Abutment supported mtl crown					
D6063	E		Abutment supported mtl crown					
D6064	E		Abutment supported mtl crown					
D6065	E		Implant supported crown					
D6066	E		Implant supported mtl crown					
D6067	E		Implant supported mtl crown					
D6068	E		Abutment supported retainer					
D6069	E		Abutment supported retainer					
D6070	E		Abutment supported retainer					
D6071	E		Abutment supported retainer					
D6072	E		Abutment supported retainer					
D6073	E		Abutment supported retainer					
D6074	E		Abutment supported retainer					
D6075	E		Implant supported retainer					
D6076	E		Implant supported retainer					
D6077	E		Implant supported retainer					
D6078	E		Implnt/abut suprtd fixd dent					
D6079	E		Implnt/abut suprtd fixd dent					
D6080	E		Implant maintenance					
D6090	E		Repair implant					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D6094	E		Abut support crown titanium					
D6095	E		Odontics repr abutment					
D6100	E		Removal of implant					
D6190	E		Radio/surgical implant index					
D6194	E		Abut support retainer titani					
D6199	E		Implant procedure					
D6205	E		Pontic-indirect resin based					
D6210	E		Prosthodont high noble metal					
D6211	E		Bridge base metal cast					
D6212	E		Bridge noble metal cast					
D6214	E		Pontic titanium					
D6240	E		Bridge porcelain high noble					
D6241	E		Bridge porcelain base metal					
D6242	E		Bridge porcelain nobel metal					
D6245	E		Bridge porcelain/ceramic					
D6250	E		Bridge resin w/high noble					
D6251	E		Bridge resin base metal					
D6252	E		Bridge resin w/noble metal					
D6253	E		Provisional pontic					
D6545	E		Dental retainr cast metl					
D6548	E		Porcelain/ceramic retainer					
D6600	E		Porcelain/ceramic inlay 2srf					
D6601	E		Porc/ceram inlay >= 3 surfac					
D6602	E		Cst hgh nble mtl inlay 2 srf					
D6603	E		Cst hgh nble mtl inlay >=3sr					
D6604	E		Cst bse mtl inlay 2 surfaces					
D6605	E		Cst bse mtl inlay >= 3 surfa					
D6606	E		Cast noble metal inlay 2 sur					
D6607	E		Cst noble mtl inlay >=3 surf					
D6608	E		Onlay porc/crmc 2 surfaces					
D6609	E		Onlay porc/crmc >=3 surfaces					
D6610	E		Onlay cst hgh nbl mtl 2 srfc					
D6611	E		Onlay cst hgh nbl mtl >=3srf					
D6612	E		Onlay cst base mtl 2 surface					
D6613	E		Onlay cst base mtl >=3 surfa					
D6614	E		Onlay cst nbl mtl 2 surfaces					
D6615	E		Onlay cst nbl mtl >=3 surfac					
D6624	E		Inlay titanium					
D6634	E		Onlay titanium					
D6710	E		Crown-indirect resin based					
D6720	E		Retain crown resin w hi nble					
D6721	E		Crown resin w/base metal					
D6722	E		Crown resin w/noble metal					
D6740	E		Crown porcelain/ceramic					
D6750	E		Crown porcelain high noble					
D6751	E		Crown porcelain base metal					
D6752	E		Crown porcelain noble metal					
D6780	E		Crown 3/4 high noble metal					
D6781	E		Crown 3/4 cast based metal					
D6782	E		Crown 3/4 cast noble metal					
D6783	E		Crown 3/4 porcelain/ceramic					
D6790	E		Crown full high noble metal					
D6791	E		Crown full base metal cast					
D6792	E		Crown full noble metal cast					
D6793	E		Provisional retainer crown					
D6794	E		Crown titanium					
D6920	S		Dental connector bar	0330	7.1756	$425.82		$85.16
D6930	E		Dental recement bridge					
D6940	E		Stress breaker					
D6950	E		Precision attachment					
D6970	E		Post & core plus retainer					
D6971	E		Cast post bridge retainer					
D6972	E		Prefab post & core plus reta					
D6973	E		Core build up for retainer					
D6975	E		Coping metal					
D6976	E		Each addtnl cast post					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D6977	E		Each addtl prefab post					
D6980	E		Bridge repair					
D6985	E		Pediatric partial denture fx					
D6999	E		Fixed prosthodontic proc					
D7111	S		Coronal remnants deciduous t	0330	7.1756	$425.82		$85.16
D7140	S		Extraction erupted tooth/exr	0330	7.1756	$425.82		$85.16
D7210	S		Rem imp tooth w mucoper flp	0330	7.1756	$425.82		$85.16
D7220	S		Impact tooth remov soft tiss	0330	7.1756	$425.82		$85.16
D7230	S		Impact tooth remov part bony	0330	7.1756	$425.82		$85.16
D7240	S		Impact tooth remov comp bony	0330	7.1756	$425.82		$85.16
D7241	S		Impact tooth rem bony w/comp	0330	7.1756	$425.82		$85.16
D7250	S		Tooth root removal	0330	7.1756	$425.82		$85.16
D7260	S		Oral antral fistula closure	0330	7.1756	$425.82		$85.16
D7261	S		Primary closure sinus perf	0330	7.1756	$425.82		$85.16
D7270	E		Tooth reimplantation					
D7272	E		Tooth transplantation					
D7280	E		Exposure impact tooth orthod					
D7282	E		Mobilize erupted/malpos toot					
D7283	B		Place device impacted tooth					
D7285	E		Biopsy of oral tissue hard					
D7286	E		Biopsy of oral tissue soft					
D7287	E		Cytology sample collection					
D7288	B		Brush biopsy					
D7290	E		Repositioning of teeth					
D7291	S		Transseptal fiberotomy	0330	7.1756	$425.82		$85.16
D7310	E		Alveoplasty w/ extraction					
D7311	E		Alveoloplasty w/extract 1-3					
D7320	E		Alveoplasty w/o extraction					
D7321	B		Alveoloplasty not w/extracts					
D7340	E		Vestibuloplasty ridge extens					
D7350	E		Vestibuloplasty exten graft					
D7410	E		Rad exc lesion up to 1.25 cm					
D7411	E		Excision benign lesion>1.25c					
D7412	E		Excision benign lesion compl					
D7413	E		Excision malig lesion < =1.25c					
D7414	E		Excision malig lesion > 1.25cm					
D7415	E		Excision malig les complicat					
D7440	E		Malig tumor exc to 1.25 cm					
D7441	E		Malig tumor > 1.25 cm					
D7450	E		Rem odontogen cyst to 1.25cm					
D7451	E		Rem odontogen cyst > 1.25 cm					
D7460	E		Rem nonodonto cyst to 1.25cm					
D7461	E		Rem nonodonto cyst > 1.25 cm					
D7465	E		Lesion destruction					
D7471	E		Rem exostosis any site					
D7472	E		Removal of torus palatinus					
D7473	E		Remove torus mandibularis					
D7485	E		Surg reduct osseoustuberosit					
D7490	E		Mandible resection					
D7510	E		I&d absc intraoral soft tiss					
D7511	B		Incision/drain abscess intra					
D7520	E		I&d abscess extraoral					
D7521	B		Incision/drain abscess extra					
D7530	E		Removal fb skin/areolar tiss					
D7540	E		Removal of fb reaction					
D7550	E		Removal of sloughed off bone					
D7560	E		Maxillary sinusotomy					
D7610	E		Maxilla open reduct simple					
D7620	E		Clsd reduct simpl maxilla fx					
D7630	E		Open red simpl mandible fx					
D7640	E		Clsd red simpl mandible fx					
D7650	E		Open red simp malar/zygom fx					
D7660	E		Clsd red simp malar/zygom fx					
D7670	E		Closd rductn splint alveolus					
D7671	E		Alveolus open reduction					
D7680	E		Reduct simple facial bone fx					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D7710	E		Maxilla open reduct compound					
D7720	E		Clsd reduct compd maxilla fx					
D7730	E		Open reduct compd mandble fx					
D7740	E		Clsd reduct compd mandble fx					
D7750	E		Open red comp malar/zygma fx					
D7760	E		Clsd red comp malar/zygma fx					
D7770	E		Open reduc compd alveolus fx					
D7771	E		Alveolus clsd reduc stblz te					
D7780	E		Reduct compnd facial bone fx					
D7810	E		Tmj open reduct-dislocation					
D7820	E		Closed tmp manipulation					
D7830	E		Tmj manipulation under anest					
D7840	E		Removal of tmj condyle					
D7850	E		Tmj meniscectomy					
D7852	E		Tmj repair of joint disc					
D7854	E		Tmj excisn of joint membrane					
D7856	E		Tmj cutting of a muscle					
D7858	E		Tmj reconstruction					
D7860	E		Tmj cutting into joint					
D7865	E		Tmj reshaping components					
D7870	E		Tmj aspiration joint fluid					
D7871	E		Lysis + lavage w catheters					
D7872	E		Tmj diagnostic arthroscopy					
D7873	E		Tmj arthroscopy lysis adhesn					
D7874	E		Tmj arthroscopy disc reposit					
D7875	E		Tmj arthroscopy synovectomy					
D7876	E		Tmj arthroscopy discectomy					
D7877	E		Tmj arthroscopy debridement					
D7880	E		Occlusal orthotic appliance					
D7899	E		Tmj unspecified therapy					
D7910	E		Dent sutur recent wnd to 5cm					
D7911	E		Dental suture wound to 5 cm					
D7912	E		Suture complicate wnd > 5 cm					
D7920	E		Dental skin graft					
D7940	S		Reshaping bone orthognathic	0330	7.1756	$425.82		$85.16
D7941	E		Bone cutting ramus closed					
D7943	E		Cutting ramus open w/graft					
D7944	E		Bone cutting segmented					
D7945	E		Bone cutting body mandible					
D7946	E		Reconstruction maxilla total					
D7947	E		Reconstruct maxilla segment					
D7948	E		Reconstruct midface no graft					
D7949	E		Reconstruct midface w/graft					
D7950	E		Mandible graft					
D7953	E		Bone replacement graft					
D7955	E		Repair maxillofacial defects					
D7960	E		Frenulectomy/frenulotomy					
D7963	E		Frenuloplasty					
D7970	E		Excision hyperplastic tissue					
D7971	E		Excision pericoronal gingiva					
D7972	E		Surg redct fibrous tuberosit					
D7980	E		Sialolithotomy					
D7981	E		Excision of salivary gland					
D7982	E		Sialodochoplasty					
D7983	E		Closure of salivary fistula					
D7990	E		Emergency tracheotomy					
D7991	E		Dental coronoidectomy					
D7995	E		Synthetic graft facial bones					
D7996	E		Implant mandible for augment					
D7997	E		Appliance removal					
D7999	E		Oral surgery procedure					
D8010	E		Limited dental tx primary					
D8020	E		Limited dental tx transition					
D8030	E		Limited dental tx adolescent					
D8040	E		Limited dental tx adult					
D8050	E		Intercep dental tx primary					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D8060	E		Intercep dental tx transitn					
D8070	E		Compre dental tx transition					
D8080	E		Compre dental tx adolescent					
D8090	E		Compre dental tx adult					
D8210	E		Orthodontic rem appliance tx					
D8220	E		Fixed appliance therapy habt					
D8660	E		Preorthodontic tx visit					
D8670	E		Periodic orthodontc tx visit					
D8680	E		Orthodontic retention					
D8690	E		Orthodontic treatment					
D8691	E		Repair ortho appliance					
D8692	E		Replacement retainer					
D8999	E		Orthodontic procedure					
D9110	N		Tx dental pain minor proc					
D9210	E		Dent anesthesia w/o surgery					
D9211	E		Regional block anesthesia					
D9212	E		Trigeminal block anesthesia					
D9215	E		Local anesthesia					
D9220	E		General anesthesia					
D9221	E		General anesthesia ea ad 15m					
D9230	N		Analgesia					
D9241	E		Intravenous sedation					
D9242	E		IV sedation ea ad 30 m					
D9248	N		Sedation (non-iv)					
D9310	E		Dental consultation					
D9410	E		Dental house call					
D9420	E		Hospital call					
D9430	E		Office visit during hours					
D9440	E		Office visit after hours					
D9450	E		Case presentation tx plan					
D9610	E		Dent therapeutic drug inject					
D9630	S		Other drugs/medicaments	0330	7.1756	$425.82		$85.16
D9910	E		Dent appl desensitizing med					
D9911	E		Appl desensitizing resin					
D9920	E		Behavior management					
D9930	S		Treatment of complications	0330	7.1756	$425.82		$85.16
D9940	S		Dental occlusal guard	0330	7.1756	$425.82		$85.16
D9941	E		Fabrication athletic guard					
D9942	E		Repair/reline occlusal guard					
D9950	S		Occlusion analysis	0330	7.1756	$425.82		$85.16
D9951	S		Limited occlusal adjustment	0330	7.1756	$425.82		$85.16
D9952	S		Complete occlusal adjustment	0330	7.1756	$425.82		$85.16
D9970	E		Enamel microabrasion					
D9971	E		Odontoplasty 1-2 teeth					
D9972	E		Extrnl bleaching per arch					
D9973	E		Extrnl bleaching per tooth					
D9974	E		Intrnl bleaching per tooth					
D9999	E		Adjunctive procedure					
E0100	Y		Cane adjust/fixed with tip					
E0105	Y		Cane adjust/fixed quad/3 pro					
E0110	Y		Crutch forearm pair					
E0111	Y		Crutch forearm each					
E0112	Y		Crutch underarm pair wood					
E0113	Y		Crutch underarm each wood					
E0114	Y		Crutch underarm pair no wood					
E0116	Y		Crutch underarm each no wood					
E0117	Y		Underarm springassist crutch					
E0118	E		Crutch substitute					
E0130	Y		Walker rigid adjust/fixed ht					
E0135	Y		Walker folding adjust/fixed					
E0140	Y		Walker w trunk support					
E0141	Y		Rigid wheeled walker adj/fix					
E0143	Y		Walker folding wheeled w/o s					
E0144	Y		Enclosed walker w rear seat					
E0147	Y		Walker variable wheel resist					
E0148	Y		Heavyduty walker no wheels					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0149	Y		Heavy duty wheeled walker					
E0153	Y		Forearm crutch platform atta					
E0154	Y		Walker platform attachment					
E0155	Y		Walker wheel attachment,pair					
E0156	Y		Walker seat attachment					
E0157	Y		Walker crutch attachment					
E0158	Y		Walker leg extenders set of4					
E0159	Y		Brake for wheeled walker					
E0160	Y		Sitz type bath or equipment					
E0161	Y		Sitz bath/equipment w/faucet					
E0162	Y		Sitz bath chair					
E0163	Y		Commode chair stationry fxd					
E0164	Y		Commode chair mobile fixed a					
E0166	Y		Commode chair mobile detach					
E0167	Y		Commode chair pail or pan					
E0168	Y		Heavyduty/wide commode chair					
E0169	Y		Seatlift incorp commodechair					
E0175	Y		Commode chair foot rest					
E0180	Y		Press pad alternating w pump					
E0181	Y		Press pad alternating w/ pum					
E0182	Y		Pressure pad alternating pum					
E0184	Y		Dry pressure mattress					
E0185	Y		Gel pressure mattress pad					
E0186	Y		Air pressure mattress					
E0187	Y		Water pressure mattress					
E0188	Y		Synthetic sheepskin pad					
E0189	Y		Lambswool sheepskin pad					
E0190	E		Positioning cushion					
E0191	Y		Protector heel or elbow					
E0193	Y		Powered air flotation bed					
E0194	Y		Air fluidized bed					
E0196	Y		Gel pressure mattress					
E0197	Y		Air pressure pad for mattres					
E0198	Y		Water pressure pad for mattr					
E0199	Y		Dry pressure pad for mattres					
E0200	Y		Heat lamp without stand					
E0202	Y		Phototherapy light w/ photom					
E0203	E		Therapeutic lightbox tabletp					
E0205	Y		Heat lamp with stand					
E0210	Y		Electric heat pad standard					
E0215	Y		Electric heat pad moist					
E0217	Y		Water circ heat pad w pump					
E0218	Y		Water circ cold pad w pump					
E0220	Y		Hot water bottle					
E0221	E		Infrared heating pad system					
E0225	Y		Hydrocollator unit					
E0230	Y		Ice cap or collar					
E0231	E		Wound warming device					
E0232	E		Warming card for NWT					
E0235	Y		Paraffin bath unit portable					
E0236	Y		Pump for water circulating p					
E0238	Y		Heat pad non-electric moist					
E0239	Y		Hydrocollator unit portable					
E0240	E		Bath/shower chair					
E0241	E		Bath tub wall rail					
E0242	E		Bath tub rail floor					
E0243	E		Toilet rail					
E0244	E		Toilet seat raised					
E0245	E		Tub stool or bench					
E0246	E		Transfer tub rail attachment					
E0247	E		Trans bench w/wo comm open					
E0248	E		HDtrans bench w/wo comm open					
E0249	Y		Pad water circulating heat u					
E0250	Y		Hosp bed fixed ht w/ mattres					
E0251	Y		Hosp bed fixd ht w/o mattres					
E0255	Y		Hospital bed var ht w/ mattr					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0256	Y		Hospital bed var ht w/o matt					
E0260	Y		Hosp bed semi-electr w/ matt					
E0261	Y		Hosp bed semi-electr w/o mat					
E0265	Y		Hosp bed total electr w/ mat					
E0266	Y		Hosp bed total elec w/o matt					
E0270	E		Hospital bed institutional t					
E0271	Y		Mattress innerspring					
E0272	Y		Mattress foam rubber					
E0273	E		Bed board					
E0274	E		Over-bed table					
E0275	Y		Bed pan standard					
E0276	Y		Bed pan fracture					
E0277	Y		Powered pres-redu air mattrs					
E0280	Y		Bed cradle					
E0290	Y		Hosp bed fx ht w/o rails w/m					
E0291	Y		Hosp bed fx ht w/o rail w/o					
E0292	Y		Hosp bed var ht w/o rail w/o					
E0293	Y		Hosp bed var ht w/o rail w/					
E0294	Y		Hosp bed semi-elect w/ mattr					
E0295	Y		Hosp bed semi-elect w/o matt					
E0296	Y		Hosp bed total elect w/ matt					
E0297	Y		Hosp bed total elect w/o mat					
E0300	Y		Enclosed ped crib hosp grade					
E0301	Y		HD hosp bed, 350-600 lbs					
E0302	Y		Ex hd hosp bed > 600 lbs					
E0303	Y		Hosp bed hvy dty xtra wide					
E0304	Y		Hosp bed xtra hvy dty × wide					
E0305	Y		Rails bed side half length					
E0310	Y		Rails bed side full length					
E0315	E		Bed accessory brd/tbl/supprt					
E0316	Y		Bed safety enclosure					
E0325	Y		Urinal male jug-type					
E0326	Y		Urinal female jug-type					
E0350	E		Control unit bowel system					
E0352	E		Disposable pack w/bowel syst					
E0370	E		Air elevator for heel					
E0371	Y		Nonpower mattress overlay					
E0372	Y		Powered air mattress overlay					
E0373	Y		Nonpowered pressure mattress					
E0424	Y		Stationary compressed gas 02					
E0425	E		Gas system stationary compre					
E0430	E		Oxygen system gas portable					
E0431	Y		Portable gaseous 02					
E0434	Y		Portable liquid 02					
E0435	E		Oxygen system liquid portabl					
E0439	Y		Stationary liquid 02					
E0440	E		Oxygen system liquid station					
E0441	Y		Oxygen contents, gaseous					
E0442	Y		Oxygen contents, liquid					
E0443	Y		Portable 02 contents, gas					
E0444	Y		Portable 02 contents, liquid					
E0445	A		Oximeter non-invasive					
E0450	Y		Volume vent stationary/porta					
E0455	Y		Oxygen tent excl croup/ped t					
E0457	Y		Chest shell					
E0459	Y		Chest wrap					
E0460	Y		Neg press vent portabl/statn					
E0461	Y		Vol vent noninvasive interfa					
E0462	Y		Rocking bed w/ or w/o side r					
E0463	Y		Press supp vent invasive int					
E0464	Y		Press supp vent noninv int					
E0470	Y		RAD w/o backup non-inv intfc					
E0471	Y		RAD w/backup non inv intrfc					
E0472	Y		RAD w backup invasive intrfc					
E0480	Y		Percussor elect/pneum home m					
E0481	E		Intrpulmnry percuss vent sys					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0482	Y		Cough stimulating device					
E0483	Y		Chest compression gen system					
E0484	Y		Non-elec oscillatory pep dvc					
E0500	Y		Ippb all types					
E0550	Y		Humidif extens supple w ippb					
E0555	Y		Humidifier for use w/ regula					
E0560	Y		Humidifier supplemental w/ i					
E0561	Y		Humidifier nonheated w PAP					
E0562	Y		Humidifier heated used w PAP					
E0565	Y		Compressor air power source					
E0570	Y		Nebulizer with compression					
E0571	Y		Aerosol compressor for svneb					
E0572	Y		Aerosol compressor adjust pr					
E0574	Y		Ultrasonic generator w svneb					
E0575	Y		Nebulizer ultrasonic					
E0580	Y		Nebulizer for use w/ regulat					
E0585	Y		Nebulizer w/ compressor & he					
E0590	Y		Dispensing fee dme neb drug					
E0600	Y		Suction pump portab hom modl					
E0601	Y		Cont airway pressure device					
E0602	Y		Manual breast pump					
E0603	A		Electric breast pump					
E0604	A		Hosp grade elec breast pump					
E0605	Y		Vaporizer room type					
E0606	Y		Drainage board postural					
E0607	Y		Blood glucose monitor home					
E0610	Y		Pacemaker monitr audible/vis					
E0615	Y		Pacemaker monitr digital/vis					
E0616	N		Cardiac event recorder					
E0617	Y		Automatic ext defibrillator					
E0618	A		Apnea monitor					
E0619	A		Apnea monitor w recorder					
E0620	Y		Cap bld skin piercing laser					
E0621	Y		Patient lift sling or seat					
E0625	E		Patient lift bathroom or toi					
E0627	Y		Seat lift incorp lift-chair					
E0628	Y		Seat lift for pt furn-electr					
E0629	Y		Seat lift for pt furn-non-el					
E0630	Y		Patient lift hydraulic					
E0635	Y		Patient lift electric					
E0636	Y		PT support & positioning sys					
E0637	E		Sit-stand w seatlift wheeled					
E0638	E		Standing frame sys wheeled					
E0639	E		Moveable patient lift system					
E0640	E		Fixed patient lift system					
E0650	Y		Pneuma compresor non-segment					
E0651	Y		Pneum compressor segmental					
E0652	Y		Pneum compres w/cal pressure					
E0655	Y		Pneumatic appliance half arm					
E0660	Y		Pneumatic appliance full leg					
E0665	Y		Pneumatic appliance full arm					
E0666	Y		Pneumatic appliance half leg					
E0667	Y		Seg pneumatic appl full leg					
E0668	Y		Seg pneumatic appl full arm					
E0669	Y		Seg pneumatic appli half leg					
E0671	Y		Pressure pneum appl full leg					
E0672	Y		Pressure pneum appl full arm					
E0673	Y		Pressure pneum appl half leg					
E0675	Y		Pneumatic compression device					
E0691	Y		Uvl pnl 2 sq ft or less					
E0692	Y		Uvl sys panel 4 ft					
E0693	Y		Uvl sys panel 6 ft					
E0694	Y		Uvl md cabinet sys 6 ft					
E0700	E		Safety equipment					
E0701	Y		Helmet w face guard prefab					
E0710	E		Restraints any type					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0720	Y		Tens two lead					
E0730	Y		Tens four lead					
E0731	Y		Conductive garment for tens/					
E0740	Y		Incontinence treatment systm					
E0744	Y		Neuromuscular stim for scoli					
E0745	Y		Neuromuscular stim for shock					
E0746	E		Electromyograph biofeedback					
E0747	Y		Elec osteogen stim not spine					
E0748	Y		Elec osteogen stim spinal					
E0749	N		Elec osteogen stim implanted					
E0752	B		Neurostimulator electrode					
E0754	A		Pulsegenerator pt programmer					
E0755	E		Electronic salivary reflex s					
E0756	B		Implantable pulse generator					
E0757	N		Implantable RF receiver					
E0758	A		External RF transmitter					
E0759	A		Replace rdfrquncy transmittr					
E0760	Y		Osteogen ultrasound stimltor					
E0761	E		Nontherm electromgntc device					
E0765	Y		Nerve stimulator for tx n&v					
E0769	B		Electric wound treatment dev					
E0776	Y		Iv pole					
E0779	Y		Amb infusion pump mechanical					
E0780	Y		Mech amb infusion pump <8hrs					
E0781	Y		External ambulatory infus pu					
E0782	N		Non-programble infusion pump					
E0783	N		Programmable infusion pump					
E0784	Y		Ext amb infusn pump insulin					
E0785	N		Replacement impl pump cathet					
E0786	N		Implantable pump replacement					
E0791	Y		Parenteral infusion pump sta					
E0830	N		Ambulatory traction device					
E0840	Y		Tract frame attach headboard					
E0849	Y		Cervical pneum trac equip					
E0850	Y		Traction stand free standing					
E0855	Y		Cervical traction equipment					
E0860	Y		Tract equip cervical tract					
E0870	Y		Tract frame attach footboard					
E0880	Y		Trac stand free stand extrem					
E0890	Y		Traction frame attach pelvic					
E0900	Y		Trac stand free stand pelvic					
E0910	Y		Trapeze bar attached to bed					
E0920	Y		Fracture frame attached to b					
E0930	Y		Fracture frame free standing					
E0935	Y		Exercise device passive moti					
E0940	Y		Trapeze bar free standing					
E0941	Y		Gravity assisted traction de					
E0942	Y		Cervical head harness/halter					
E0944	Y		Pelvic belt/harness/boot					
E0945	Y		Belt/harness extremity					
E0946	Y		Fracture frame dual w cross					
E0947	Y		Fracture frame attachmnts pe					
E0948	Y		Fracture frame attachmnts ce					
E0950	E		Tray					
E0951	E		Loop heel					
E0952	E		Toe loop/holder, each					
E0953	E		Pneumatic tire					
E0954	E		Wheelchair semi-pneumatic ca					
E0955	Y		Cushioned headrest					
E0956	Y		W/c lateral trunk/hip suppor					
E0957	Y		W/c medial thigh support					
E0958	A		Whlchr att- conv 1 arm drive					
E0959	B		Amputee adapter					
E0960	Y		W/c shoulder harness/straps					
E0961	B		Wheelchair brake extension					
E0966	B		Wheelchair head rest extensi					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0967	Y		Wheelchair hand rims					
E0968	Y		Wheelchair commode seat					
E0969	Y		Wheelchair narrowing device					
E0970	B		Wheelchair no. 2 footplates					
E0971	B		Wheelchair anti-tipping devi					
E0972	A		Transfer board or device					
E0973	B		W/Ch access det adj armrest					
E0974	B		W/Ch access anti-rollback					
E0977	Y		Wheelchair wedge cushion					
E0978	B		W/C acc,saf belt pelv strap					
E0980	Y		Wheelchair safety vest					
E0981	Y		Seat upholstery, replacement					
E0982	Y		Back upholstery, replacement					
E0983	Y		Add pwr joystick					
E0984	Y		Add pwr tiller					
E0985	Y		W/c seat lift mechanism					
E0986	Y		Man w/c push-rim pow assist					
E0990	B		Whellchair elevating leg res					
E0992	B		Wheelchair solid seat insert					
E0994	Y		Wheelchair arm rest					
E0995	B		Wheelchair calf rest					
E0996	B		Wheelchair tire solid					
E0997	Y		Wheelchair caster w/ a fork					
E0998	Y		Wheelchair caster w/o a fork					
E0999	Y		Wheelchr pneumatic tire w/wh					
E1000	B		Wheelchair tire pneumatic ca					
E1001	Y		Wheelchair wheel					
E1002	Y		Pwr seat tilt					
E1003	Y		Pwr seat recline					
E1004	Y		Pwr seat recline mech					
E1005	Y		Pwr seat recline pwr					
E1006	Y		Pwr seat combo w/o shear					
E1007	Y		Pwr seat combo w/shear					
E1008	Y		Pwr seat combo pwr shear					
E1009	Y		Add mech leg elevation					
E1010	Y		Add pwr leg elevation					
E1011	Y		Ped wc modify width adjustm					
E1014	Y		Reclining back add ped w/c					
E1015	Y		Shock absorber for man w/c					
E1016	Y		Shock absorber for power w/c					
E1017	Y		HD shck absrbr for hd man wc					
E1018	Y		HD shck absrber for hd powwc					
E1019	E		HD feature power seat					
E1020	Y		Residual limb support system					
E1021	E		Ex hd feature power seat					
E1025	E		Pedwc lat/thor sup nocontour					
E1026	E		Pedwc contoured lat/thor sup					
E1027	E		Ped wc lat/ant support					
E1028	Y		W/c manual swingaway					
E1029	Y		W/c vent tray fixed					
E1030	Y		W/c vent tray gimbaled					
E1031	Y		Rollabout chair with casters					
E1035	Y		Patient transfer system					
E1037	Y		Transport chair, ped size					
E1038	Y		Transport chair, adult size					
E1039	Y		Transport chair pt wt>=250lb					
E1050	A		Whelchr fxd full length arms					
E1060	A		Wheelchair detachable arms					
E1070	A		Wheelchair detachable foot r					
E1083	A		Hemi-wheelchair fixed arms					
E1084	A		Hemi-wheelchair detachable a					
E1085	A		Hemi-wheelchair fixed arms					
E1086	A		Hemi-wheelchair detachable a					
E1087	A		Wheelchair lightwt fixed arm					
E1088	A		Wheelchair lightweight det a					
E1089	A		Wheelchair lightwt fixed arm					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E1090	A		Wheelchair lightweight det a					
E1092	A		Wheelchair wide w/ leg rests					
E1093	A		Wheelchair wide w/ foot rest					
E1100	A		Whchr s-recl fxd arm leg res					
E1110	A		Wheelchair semi-recl detach					
E1130	A		Whlchr stand fxd arm ft rest					
E1140	A		Wheelchair standard detach a					
E1150	Y		Wheelchair standard w/ leg r					
E1160	A		Wheelchair fixed arms					
E1161	A		Manual adult wc w tiltinspac					
E1170	A		Whlchr ampu fxd arm leg rest					
E1171	A		Wheelchair amputee w/o leg r					
E1172	A		Wheelchair amputee detach ar					
E1180	A		Wheelchair amputee w/ foot r					
E1190	A		Wheelchair amputee w/ leg re					
E1195	A		Wheelchair amputee heavy dut					
E1200	A		Wheelchair amputee fixed arm					
E1210	Y		Whlchr moto ful arm leg rest					
E1211	Y		Wheelchair motorized w/ det					
E1212	A		Wheelchair motorized w full					
E1213	A		Wheelchair motorized w/ det					
E1220	A		Whlchr special size/constrc					
E1221	A		Wheelchair spec size w foot					
E1222	A		Wheelchair spec size w/ leg					
E1223	A		Wheelchair spec size w foot					
E1224	A		Wheelchair spec size w/ leg					
E1225	Y		Wheelchair spec sz semi-recl					
E1226	B		W/C access fully reclineback					
E1227	Y		Wheelchair spec sz spec ht a					
E1228	Y		Wheelchair spec sz spec ht b					
E1229	Y		Pediatric wheelchair NOS					
E1230	Y		Power operated vehicle					
E1231	Y		Rigid ped w/c tilt-in-space					
E1232	Y		Folding ped wc tilt-in-space					
E1233	Y		Rig ped wc tltnspc w/o seat					
E1234	Y		Fld ped wc tltnspc w/o seat					
E1235	Y		Rigid ped wc adjustable					
E1236	Y		Folding ped wc adjustable					
E1237	Y		Rgd ped wc adjstabl w/o seat					
E1238	Y		Fld ped wc adjstabl w/o seat					
E1239	Y		Ped power wheelchair NOS					
E1240	A		Whchr litwt det arm leg rest					
E1250	A		Wheelchair lightwt fixed arm					
E1260	A		Wheelchair lightwt foot rest					
E1270	A		Wheelchair lightweight leg r					
E1280	A		Whchr h-duty det arm leg res					
E1285	A		Wheelchair heavy duty fixed					
E1290	A		Wheelchair hvy duty detach a					
E1295	A		Wheelchair heavy duty fixed					
E1296	Y		Wheelchair special seat heig					
E1297	Y		Wheelchair special seat dept					
E1298	Y		Wheelchair spec seat depth/w					
E1300	E		Whirlpool portable					
E1310	Y		Whirlpool non-portable					
E1340	Y		Repair for DME, per 15 min					
E1353	Y		Oxygen supplies regulator					
E1355	Y		Oxygen supplies stand/rack					
E1372	Y		Oxy suppl heater for nebuliz					
E1390	Y		Oxygen concentrator					
E1391	Y		Oxygen concentrator, dual					
E1399	N		Durable medical equipment mi					
E1405	Y		O2/water vapor enrich w/heat					
E1406	Y		O2/water vapor enrich w/o he					
E1500	A		Centrifuge					
E1510	A		Kidney dialysate delivry sys					
E1520	A		Heparin infusion pump					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E1530	A		Replacement air bubble detec					
E1540	A		Replacement pressure alarm					
E1550	A		Bath conductivity meter					
E1560	A		Replace blood leak detector					
E1570	A		Adjustable chair for esrd pt					
E1575	A		Transducer protect/fld bar					
E1580	A		Unipuncture control system					
E1590	A		Hemodialysis machine					
E1592	A		Auto interm peritoneal dialy					
E1594	A		Cycler dialysis machine					
E1600	A		Deli/install chrg hemo equip					
E1610	A		Reverse osmosis h2o puri sys					
E1615	A		Deionizer H2O puri system					
E1620	A		Replacement blood pump					
E1625	A		Water softening system					
E1630	A		Reciprocating peritoneal dia					
E1632	A		Wearable artificial kidney					
E1634	B		Peritoneal dialysis clamp					
E1635	A		Compact travel hemodialyzer					
E1636	A		Sorbent cartridges per 10					
E1637	A		Hemostats for dialysis, each					
E1639	A		Dialysis scale					
E1699	A		Dialysis equipment noc					
E1700	Y		Jaw motion rehab system					
E1701	Y		Repl cushions for jaw motion					
E1702	Y		Repl measr scales jaw motion					
E1800	Y		Adjust elbow ext/flex device					
E1801	Y		SPS elbow device					
E1802	Y		Adjst forearm pro/sup device					
E1805	Y		Adjust wrist ext/flex device					
E1806	Y		SPS wrist device					
E1810	Y		Adjust knee ext/flex device					
E1811	Y		SPS knee device					
E1815	Y		Adjust ankle ext/flex device					
E1816	Y		SPS ankle device					
E1818	Y		SPS forearm device					
E1820	Y		Soft interface material					
E1821	Y		Replacement interface SPSD					
E1825	Y		Adjust finger ext/flex devc					
E1830	Y		Adjust toe ext/flex device					
E1840	Y		Adj shoulder ext/flex device					
E1841	Y		Static str shldr dev rom adj					
E1902	A		AAC non-electronic board					
E2000	Y		Gastric suction pump hme mdl					
E2100	Y		Bld glucose monitor w voice					
E2101	Y		Bld glucose monitor w lance					
E2120	Y		Pulse gen sys tx endolymp fl					
E2201	Y		Man w/ch acc seat w>=20÷<24÷					
E2202	Y		Seat width 24-27 in					
E2203	Y		Frame depth less than 22 in					
E2204	Y		Frame depth 22 to 25 in					
E2205	Y		Manual wc accessory, handrim					
E2206	Y		Complete wheel lock assembly					
E2291	E		Planar back for ped size wc					
E2292	E		Planar seat for ped size wc					
E2293	E		Contour back for ped size wc					
E2294	E		Contour seat for ped size wc					
E2300	Y		Pwr seat elevation sys					
E2301	Y		Pwr standing					
E2310	Y		Electro connect btw control					
E2311	Y		Electro connect btw 2 sys					
E2320	Y		Hand chin control					
E2321	Y		Hand interface joystick					
E2322	Y		Mult mech switches					
E2323	Y		Special joystick handle					
E2324	Y		Chin cup interface					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E2325	Y		Sip and puff interface					
E2326	Y		Breath tube kit					
E2327	Y		Head control interface mech					
E2328	Y		Head/extremity control inter					
E2329	Y		Head control nonproportional					
E2330	Y		Head control proximity switc					
E2331	Y		Attendant control					
E2340	Y		W/c wdth 20-23 in seat frame					
E2341	Y		W/c wdth 24-27 in seat frame					
E2342	Y		W/c dpth 20-21 in seat frame					
E2343	Y		W/c dpth 22-25 in seat frame					
E2351	Y		Electronic SGD interface					
E2360	Y		22nf nonsealed leadacid					
E2361	Y		22nf sealed leadacid battery					
E2362	Y		Gr24 nonsealed leadacid					
E2363	Y		Gr24 sealed leadacid battery					
E2364	Y		U1nonsealed leadacid battery					
E2365	Y		U1 sealed leadacid battery					
E2366	Y		Battery charger, single mode					
E2367	Y		Battery charger, dual mode					
E2368	Y		Power wc motor replacement					
E2369	Y		Pwr wc gear box replacement					
E2370	Y		Pwr wc motor/gear box combo					
E2399	Y		Noc interface					
E2402	Y		Neg press wound therapy pump					
E2500	Y		SGD digitized pre-rec <=8min					
E2502	Y		SGD prerec msg >8min <=20min					
E2504	Y		SGD prerec msg>20min <=40min					
E2506	Y		SGD prerec msg > 40 min					
E2508	Y		SGD spelling phys contact					
E2510	Y		SGD w multi methods msg/accs					
E2511	Y		SGD sftwre prgrm for PC/PDA					
E2512	Y		SGD accessory, mounting sys					
E2599	Y		SGD accessory noc					
E2601	Y		Gen w/c cushion wdth < 22 in					
E2602	Y		Gen w/c cushion wdth >=22 in					
E2603	Y		Skin protect wc cus wd <22in					
E2604	Y		Skin protect wc cus wd>=22in					
E2605	Y		Position wc cush wdth <22 in					
E2606	Y		Position wc cush wdth>=22 in					
E2607	Y		Skin pro/pos wc cus wd <22in					
E2608	Y		Skin pro/pos wc cus wd>=22in					
E2609	Y		Custom fabricate w/c cushion					
E2610	B		Powered w/c cushion					
E2611	Y		Gen use back cush wdth <22in					
E2612	Y		Gen use back cush wdth>=22in					
E2613	Y		Position back cush wd <22in					
E2614	Y		Position back cush wd>=22in					
E2615	Y		Pos back post/lat wdth <22in					
E2616	Y		Pos back post/lat wdth>=22in					
E2617	Y		Custom fab w/c back cushion					
E2618	Y		Wc acc solid seat supp base					
E2619	Y		Replace cover w/c seat cush					
E2620	Y		WC planar back cush wd <22in					
E2621	Y		WC planar back cush wd>=22in					
E8000	E		Posterior gait trainer					
E8001	E		Upright gait trainer					
E8002	E		Anterior gait trainer					
G0008	X		Admin influenza virus vac	0350	0.3954	$23.46	$0.00	$0.00
G0009	X		Admin pneumococcal vaccine	0350	0.3954	$23.46	$0.00	$0.00
G0010	B		Admin hepatitis b vaccine					
G0027	A		Semen analysis					
G0101	V		CA screen pelvic/breast exam	0600	0.8688	$51.56		$10.31
G0102	N		Prostate ca screening dre					
G0103	A		Psa, total screening					
G0104	S		CA screen flexi sigmoidscope	0159	3.1455	$186.66		$46.67

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0105	T		Colorectal scrn hi risk ind	0158	7.6588	$454.50		$113.63
G0106	S		Colon CA screen barium enema	0157	2.2904	$135.92		$27.18
G0107	A		CA screen fecal blood test					
G0108	A		Diab manage trn per indiv					
G0109	A		Diab manage trn ind/group					
G0110	A		Nett pulm-rehab educ ind					
G0111	A		Nett pulm-rehab educ group					
G0112	A		Nett nutrition guid, initial					
G0113	A		Nett nutrition guid,subseqnt					
G0114	A		Nett psychosocial consult					
G0115	A		Nett psychological testing					
G0116	A		Nett psychosocial counsel					
G0117	S		Glaucoma scrn hgh risk direc	0230	0.7858	$46.63	$14.97	$9.33
G0118	S		Glaucoma scrn hgh risk direc	0230	0.7858	$46.63	$14.97	$9.33
G0120	S		Colon ca scrn barium enema	0157	2.2904	$135.92		$27.18
G0121	T		Colon ca scrn not hi rsk ind	0158	7.6588	$454.50		$113.63
G0122	E		Colon ca scrn barium enema					
G0123	A		Screen cerv/vag thin layer					
G0124	A		Screen c/v thin layer by MD					
G0127	T		Trim nail(s)	0009	0.668	$39.64	$8.34	$7.93
G0128	B		CORF skilled nursing service					
G0129	P		Partial hosp prog service	0033	4.0708	$241.57		$48.31
G0130	X		Single energy x-ray study	0260	0.7555	$44.83	$17.93	$8.97
G0141	E		Scr c/v cyto,autosys and md					
G0143	A		Scr c/v cyto,thinlayer,rescr					
G0144	A		Scr c/v cyto,thinlayer,rescr					
G0145	A		Scr c/v cyto,thinlayer,rescr					
G0147	A		Scr c/v cyto, automated sys					
G0148	A		Scr c/v cyto, autosys, rescr					
G0151	B		HHCP-serv of pt,ea 15 min					
G0152	B		HHCP-serv of ot,ea 15 min					
G0153	B		HHCP-svs of s/l path,ea 15mn					
G0154	B		HHCP-svs of rn,ea 15 min					
G0155	B		HHCP-svs of csw,ea 15 min					
G0156	B		HHCP-svs of aide,ea 15 min					
G0166	T		Extrnl counterpulse, per tx	0678	1.7276	$102.52		$20.50
G0168	N		Wound closure by adhesive					
G0173	S		Linear acc stereo radsur com	1528		$5,250.00		$1,050.00
G0175	V		OPPS Service,sched team conf	0602	1.4284	$84.77		$16.95
G0176	P		OPPS/PHP activity therapy	0033	4.0708	$241.57		$48.31
G0177	P		OPPS/PHP train & educ serv	0033	4.0708	$241.57		$48.31
G0179	E		MD recertification HHA PT					
G0180	E		MD certification HHA patient					
G0181	E		Home health care supervision					
G0182	E		Hospice care supervision					
G0186	T		Dstry eye lesn,fdr vssl tech	0235	4.6593	$276.50	$67.40	$55.30
G0202	A		Screeningmammographydigital					
G0204	A		Diagnosticmammographydigital					
G0206	A		Diagnosticmammographydigital					
G0219	E		PET img whbd ring noncov ind					
G0235	E		PET not otherwise specified					
G0237	S		Therapeutic procd strg endur	0411	0.3869	$22.96		$4.59
G0238	S		Oth resp proc, indiv	0411	0.3869	$22.96		$4.59
G0239	S		Oth resp proc, group	0411	0.3869	$22.96		$4.59
G0243	S		Multisour photon stero treat	1528		$5,250.00		$1,050.00
G0244	B		Observ care by facility topt					
G0245	V		Initial Foot Exam PTLOPS	0600	0.8688	$51.56		$10.31
G0246	V		Followup eval of foot pt lop	0600	0.8688	$51.56		$10.31
G0247	T		Routine footcare pt w lops	0009	0.668	$39.64	$8.34	$7.93
G0248	S		Demonstrate use home inr mon	1503		$150.00		$30.00
G0249	S		Provide test material,equipm	1503		$150.00		$30.00
G0250	E		MD review interpret of test					
G0251	S		Linear acc based stero radio	1513		$1,150.00		$230.00
G0252	E		PET imaging initial dx					
G0255	E		Current percep threshold tst					
G0257	S		Unsched dialysis ESRD pt hos	0170	5.8994	$350.09		$70.02

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0258	X		IV infusion during obs stay	0340	0.6384	$37.88		$7.58
G0259	N		Inject for sacroiliac joint					
G0260	T		Inj for sacroiliac jt anesth	0206	5.492	$325.91	$75.55	$65.18
G0263	B		Adm with CHF, CP, asthma					
G0264	B		Assmt otr CHF, CP, asthma					
G0265	A		Cryopresevation Freeze+stora					
G0266	A		Thawing + expansion froz cel					
G0267	S		Bone marrow or psc harvest	0110	3.6594	$217.16		$43.43
G0268	X		Removal of impacted wax md	0340	0.6384	$37.88		$7.58
G0269	N		Occlusive device in vein art					
G0270	A		MNT subs tx for change dx					
G0271	A		Group MNT 2 or more 30 mins					
G0275	N		Renal angio, cardiac cath					
G0278	N		Iliac art angio,cardiac cath					
G0279	A		Excorp shock tx, elbow epi					
G0280	A		Excorp shock tx other than					
G0281	A		Elec stim unattend for press					
G0282	E		Elect stim wound care not pd					
G0283	A		Elec stim other than wound					
G0288	S		Recon, CTA for pre & post su	0417	4.075	$241.82		$48.36
G0289	N		Arthro, loose body + chondro					
G0290	T		Drug-eluting stents, single	0656	109.9237	$6,523.20		$1,304.64
G0291	T		Drug-eluting stents,each add	0656	109.9237	$6,523.20		$1,304.64
G0293	S		Non-cov surg proc,clin trial	1505		$350.00		$70.00
G0294	S		Non-cov proc, clinical trial	1502		$75.00		$15.00
G0295	E		Electromagnetic therapy onc					
G0297	T		Insert single chamber/cd	0107	260.0295	$15,430.93	$3,103.22	$3,086.19
G0298	T		Insert dual chamber/cd	0107	260.0295	$15,430.93	$3,103.22	$3,086.19
G0299	T		Inser/repos single icd+leads	0108	349.1681	$20,720.68		$4,144.14
G0300	T		Insert reposit lead dual+gen	0108	349.1681	$20,720.68		$4,144.14
G0302	S		Pre-op service LVRS complete	1509		$750.00		$150.00
G0303	S		Pre-op service LVRS 10-15dos	507		$550.00		$110.00
G0304	S		Pre-op service LVRS 1-9 dos	1504		$250.00		$50.00
G0305	S		Post op service LVRS min 6	1504		$250.00		$50.00
G0306	A		CBC/diffwbc w/o platelet					
G0307	A		CBC without platelet					
G0308	A		ESRD related svc 4+mo<2yrs					
G0309	A		ESRD related svc 2-3mo<2yrs					
G0310	A		ESRD related svc 1vst<2yr					
G0311	A		ESRD related svs 4+mo 2-11yr					
G0312	A		ESRD relate svs 2-3 mo 2-11y					
G0313	A		ESRD related svs 1 mon 2-11y					
G0314	A		ESRD relate svs 4+mo 12-19					
G0315	A		ESRD related svs 2-3 mo 12-1					
G0316	A		ESRD related svs 1 vis/12-19					
G0317	A		ESRD related svs 4+mo 20+yrs					
G0318	A		ESRD related svs 2-3 mo 20+y					
G0319	A		ESRD related svs 1visit 20+y					
G0320	A		ESRD related svs home under					
G0321	A		ESRDrelatedsvs home mo 2-11y					
G0322	A		ESRD related svs home mo 12-1					
G0323	A		ESRD related svs home mo 20+					
G0324	A		ESRD related svs home/dy/2y					
G0325	A		ESRD relate home/dy 2-11yr					
G0326	A		ESRD relate home/dy 12-19y					
G0327	A		ESRD relate home/dy 20+yrs					
G0328	A		Fecal blood scrn immunoassay					
G0329	A		Electromagntic tx for ulcers					
G0337	A		Hospice evaluation preelecti					
G0339	S		Robot lin-radsurg com, first	1528		$5,250.00		$1,050.00
G0340	S		Robt lin-radsurg fractx 2-5	1525		$3,750.00		$750.00
G0341	C		Percutaneous islet celltrans					
G0342	C		Laparoscopy Islet cell Trans					
G0343	C		Laparotomy Islet cell tranp					
G0344	V		Initial preventive exam	0601	1.0038	$59.57		$11.91
G0345	M		IV infuse hydration initial					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0346	M		Each additional infuse hours					
G0347	M		IV infusion therapy/diagnost					
G0348	M		each additional hr up to 8hr					
G0349	M		additional sequential infuse					
G0350	M		concurrent infusion					
G0351	M		therapeutic/diagnostic injec					
G0353	M		IV push,single orinitial dru					
G0354	M		each addition sequential IV					
G0355	M		chemo administrate subcut/IM					
G0356	M		hormonal anti-neoplastic					
G0357	M		IV push single/initial subst					
G0358	M		IV push each additional drug					
G0359	M		chemotherapy IV one hr initi					
G0360	M		each additional hr 1-8 hrs					
G0361	M		prolong chemo Infuse>8hrs pu					
G0362	M		each add sequential infusion					
G0363	M		irrigate implanted venous de					
G0364	X		Bone marrow aspirate & biops	0342	0.156	$9.26	$3.70	$1.85
G0365	S		Vessel mapping hemo access	0267	2.6327	$156.23	$62.18	$31.25
G0366	B		EKG for initial prevent exam					
G0367	S		EKG tracing for initial prev	0099	0.3821	$22.67		$4.53
G0368	M		EKG interpret & report preve					
G0369	M		Pharm fee 1st month transpla					
G0370	M		Pharmacy fee oral cancer etc					
G0371	M		Pharm dispense inhalation 30					
G0374	M		Pharm dispense inhalation 90					
G0375	S		Smoke/Tobacco counseling 3-1	1491		$5.00		$1.00
G0376	S		Smoke/Tobacco counseling >10	1491		$5.00		$1.00
G3001	S		Admin + supply, tositumomab	1522		$2,250.00		$450.00
G9001	B		MCCD, initial rate					
G9002	B		MCCD,maintenance rate					
G9003	B		MCCD, risk adj hi, initial					
G9004	B		MCCD, risk adj lo, initial					
G9005	B		MCCD, risk adj, maintenance					
G9006	B		MCCD, Home monitoring					
G9007	B		MCCD, sch team conf					
G9008	B		Mccd,phys coor-care ovrsght					
G9009	E		MCCD, risk adj, level 3					
G9010	E		MCCD, risk adj, level 4					
G9011	E		MCCD, risk adj, level 5					
G9012	E		Other Specified Case Mgmt					
G9013	E		ESRD demo bundle level I					
G9014	E		ESRD demo bundle-level II					
G9016	E		Demo-smoking cessation coun					
G9017	A		Amantadine HCL,oral					
G9018	A		Zanamivir, inh pwdr					
G9019	A		Oseltamivir phosp					
G9020	A		Rimantadine HCL					
G9021	M		Chemo assess nausea vomit L1					
G9022	M		Chemo assess nausea vomit L2					
G9023	M		Chemo assess nausea vomit L3					
G9024	M		Chemo assess nausea vomit L4					
G9025	M		Chemo assessment pain level1					
G9026	M		Chemo assessment pain level2					
G9027	M		Chemo assessment pain level3					
G9028	M		Chemo assessment pain level4					
G9029	M		Chemo assess for fatigue L1					
G9030	M		Chemo assess for fatigue L2					
G9031	M		Chemo assess for fatigue L3					
G9032	M		Chemo assess for fatigue L4					
G9033	A		Amantadine HCL, oral, brand					
G9034	A		Zanamivir, inh pwdr, brand					
G9035	A		Oseltamivir phosp, brand					
G9036	A		Rimantadine HCL, brand					
G9041	A		Low vision serv occupational					
G9042	A		Low vision orient/mobility					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G9043	A		Low vision rehab therapist					
G9044	A		Low vision rehab teacher					
J0120	N		Tetracyclin injection					
J0128	G		Abarelix injection	9216		$66.96		$13.39
J0130	K		Abciximab injection	1605		$450.60		$90.12
J0135	K		Adalimumab injection	1083		$300.10		$60.02
J0150	K		Injection adenosine 6 MG	0379		$33.45		$6.69
J0152	K		Adenosine injection	0917		$71.53		$14.31
J0170	N		Adrenalin epinephrin inject					
J0180	K		Agalsidase beta injection	9208		$123.35		$24.67
J0190	N		Inj biperiden lactate/5 mg					
J0200	N		Alatrofloxacin mesylate					
J0205	K		Alglucerase injection	0900		$39.94		$7.99
J0207	K		Amifostine	7000		$436.01		$87.20
J0210	K		Methyldopate hcl injection	2210		$9.58		$1.92
J0215	B		Alefacept					
J0256	K		Alpha 1 proteinase inhibitor	0901		$3.30		$0.66
J0270	B		Alprostadil for injection					
J0275	B		Alprostadil urethral suppos					
J0280	N		Aminophyllin 250 MG inj					
J0282	N		Amiodarone HCl					
J0285	K		Amphotericin B	9030		$30.70		$6.14
J0287	K		Amphotericin b lipid complex	9024		$11.95		$2.39
J0288	K		Ampho b cholesteryl sulfate	0735		$12.24		$2.45
J0289	K		Amphotericin b liposome inj	0736		$21.91		$4.38
J0290	N		Ampicillin 500 MG inj					
J0295	N		Ampicillin sodium per 1.5 gm					
J0300	N		Amobarbital 125 MG inj					
J0330	N		Succinycholine chloride inj					
J0350	N		Injection anistreplase 30 u					
J0360	N		Hydralazine hcl injection					
J0380	N		Inj metaraminol bitartrate					
J0390	N		Chloroquine injection					
J0395	K		Arbutamine HCl injection	9031		$163.15		$32.63
J0456	N		Azithromycin					
J0460	N		Atropine sulfate injection					
J0470	N		Dimecaprol injection					
J0475	K		Baclofen 10 MG injection	9032		$188.01		$37.60
J0476	B		Baclofen intrathecal trial					
J0500	N		Dicyclomine injection					
J0515	N		Inj benztropine mesylate					
J0520	N		Bethanechol chloride inject					
J0530	N		Penicillin g benzathine inj					
J0540	N		Penicillin g benzathine inj					
J0550	N		Penicillin g benzathine inj					
J0560	N		Penicillin g benzathine inj					
J0570	N		Penicillin g benzathine inj					
J0580	K		Penicillin g benzathine inj	0880		$72.26		$14.45
J0583	N		Bivalirudin					
J0585	K		Botulinum toxin a per unit	0902		$4.80		$0.96
J0587	K		Botulinum toxin type B	9018		$7.89		$1.58
J0592	N		Buprenorphine hydrochloride					
J0595	N		Butorphanol tartrate 1 mg					
J0600	K		Edetate calcium disodium inj	0892		$40.34		$8.07
J0610	N		Calcium gluconate injection					
J0620	N		Calcium glycer & lact/10 ML					
J0630	K		Calcitonin salmon injection	0893		$35.68		$7.14
J0636	N		Inj calcitriol per 0.1 mcg					
J0637	K		Caspofungin acetate	9019		$32.35		$6.47
J0640	N		Leucovorin calcium injection					
J0670	N		Inj mepivacaine HCL/10 ml					
J0690	N		Cefazolin sodium injection					
J0692	N		Cefepime HCl for injection					
J0694	N		Cefoxitin sodium injection					
J0696	N		Ceftriaxone sodium injection					
J0697	N		Sterile cefuroxime injection					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J0698	N		Cefotaxime sodium injection					
J0702	N		Betamethasone acet&sod phosp					
J0704	N		Betamethasone sod phosp/4 MG					
J0706	K		Caffeine citrate injection	0876		$3.34		$0.67
J0710	N		Cephapirin sodium injection					
J0713	N		Inj ceftazidime per 500 mg					
J0715	N		Ceftizoxime sodium / 500 MG					
J0720	N		Chloramphenicol sodium injec					
J0725	N		Chorionic gonadotropin/1000u					
J0735	K		Clonidine hydrochloride	0935		$57.47		$11.49
J0740	K		Cidofovir injection	9033		$782.98		$156.60
J0743	N		Cilastatin sodium injection					
J0744	N		Ciprofloxacin iv					
J0745	N		Inj codeine phosphate /30 MG					
J0760	N		Colchicine injection					
J0770	N		Colistimethate sodium inj					
J0780	N		Prochlorperazine injection					
J0800	K		Corticotropin injection	1280		$95.44		$19.09
J0835	K		Inj cosyntropin per 0.25 MG	0835		$69.27		$13.85
J0850	K		Cytomegalovirus imm IV /vial	0903		$683.07		$136.61
J0878	G		Daptomycin injection	9124		$0.30		$0.06
J0880	E		Darbepoetin alfa injection					
J0895	K		Deferoxamine mesylate inj	0895		$14.91		$2.98
J0900	N		Testosterone enanthate inj					
J0945	N		Brompheniramine maleate inj					
J0970	N		Estradiol valerate injection					
J1000	N		Depo-estradiol cypionate inj					
J1020	N		Methylprednisolone 20 MG inj					
J1030	N		Methylprednisolone 40 MG inj					
J1040	N		Methylprednisolone 80 MG inj					
J1051	N		Medroxyprogesterone inj					
J1055	E		Medrxyprogester acetate inj					
J1056	E		MA/EC contraceptiveinjection					
J1060	N		Testosterone cypionate 1 ML					
J1070	N		Testosterone cypionat 100 MG					
J1080	N		Testosterone cypionat 200 MG					
J1094	N		Inj dexamethasone acetate					
J1100	N		Dexamethasone sodium phos					
J1110	K		Inj dihydroergotamine mesylt	1210		$27.82		$5.56
J1120	N		Acetazolamid sodium injectio					
J1160	N		Digoxin injection					
J1165	N		Phenytoin sodium injection					
J1170	N		Hydromorphone injection					
J1180	K		Dyphylline injection	9166		$7.74		$1.55
J1190	K		Dexrazoxane HCl injection	0726		$216.39		$43.28
J1200	N		Diphenhydramine hcl injectio					
J1205	N		Chlorothiazide sodium inj					
J1212	N		Dimethyl sulfoxide 50% 50 ML					
J1230	N		Methadone injection					
J1240	N		Dimenhydrinate injection					
J1245	N		Dipyridamole injection					
J1250	N		Inj dobutamine HCL/250 mg					
J1260	K		Dolasetron mesylate	0750		$6.55		$1.31
J1270	N		Injection, doxercalciferol					
J1320	N		Amitriptyline injection					
J1325	N		Epoprostenol injection					
J1327	K		Eptifibatide injection	1607		$12.73		$2.55
J1330	K		Ergonovine maleate injection	1330	0.5263	$31.23		$6.25
J1335	N		Ertapenem injection					
J1364	N		Erythro lactobionate /500 MG					
J1380	N		Estradiol valerate 10 MG inj					
J1390	N		Estradiol valerate 20 MG inj					
J1410	K		Inj estrogen conjugate 25 MG	9038		$57.77		$11.55
J1435	N		Injection estrone per 1 MG					
J1436	K		Etidronate disodium inj	1436		$68.69		$13.74
J1438	K		Etanercept injection	1608		$152.11		$30.42

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J1440	K		Filgrastim 300 mcg injection	0728		$178.39		$35.68
J1441	K		Filgrastim 480 mcg injection	7049		$282.29		$56.46
J1450	N		Fluconazole					
J1452	K		Intraocular Fomivirsen na	9040		$203.93		$40.79
J1455	N		Foscarnet sodium injection					
J1457	K		Gallium nitrate injection	1085		$1.30		$0.26
J1460	N		Gamma globulin 1 CC inj					
J1470	B		Gamma globulin 2 CC inj					
J1480	B		Gamma globulin 3 CC inj					
J1490	B		Gamma globulin 4 CC inj					
J1500	B		Gamma globulin 5 CC inj					
J1510	B		Gamma globulin 6 CC inj					
J1520	B		Gamma globulin 7 CC inj					
J1530	B		Gamma globulin 8 CC inj					
J1540	B		Gamma globulin 9 CC inj					
J1550	B		Gamma globulin 10 CC inj					
J1560	B		Gamma globulin > 10 CC inj					
J1563	E		IV immune globulin					
J1564	E		Immune globulin 10 mg					
J1565	K		RSV-ivig	0906		$15.56		$3.11
J1570	N		Ganciclovir sodium injection					
J1580	N		Garamycin gentamicin inj					
J1590	N		Gatifloxacin injection					
J1595	N		Injection glatiramer acetate					
J1600	N		Gold sodium thiomaleate inj					
J1610	K		Glucagon hydrochloride/1 MG	9042		$62.16		$12.43
J1620	K		Gonadorelin hydroch/ 100 mcg	7005		$173.44		$34.69
J1626	K		Granisetron HCl injection	0764		$7.24		$1.45
J1630	N		Haloperidol injection					
J1631	N		Haloperidol decanoate inj					
J1642	N		Inj heparin sodium per 10 u					
J1644	N		Inj heparin sodium per 1000u					
J1645	N		Dalteparin sodium					
J1650	N		Inj enoxaparin sodium					
J1652	N		Fondaparinux sodium					
J1655	K		Tinzaparin sodium injection	1655		$2.53		$0.51
J1670	K		Tetanus immune globulin inj	1670		$76.90		$15.38
J1700	N		Hydrocortisone acetate inj					
J1710	N		Hydrocortisone sodium ph inj					
J1720	N		Hydrocortisone sodium succ i					
J1730	K		Diazoxide injection	1740		$113.86		$22.77
J1742	K		Ibutilide fumarate injection	9044		$243.34		$48.67
J1745	K		Infliximab injection	7043		$54.20		$10.84
J1750	K		Iron dextran	9045		$11.43		$2.29
J1756	K		Iron sucrose injection	9046		$0.38		$0.08
J1785	K		Injection imiglucerase /unit	0916		$3.98		$0.80
J1790	N		Droperidol injection					
J1800	N		Propranolol injection					
J1810	E		Droperidol/fentanyl inj					
J1815	N		Insulin injection					
J1817	N		Insulin for insulin pump use					
J1825	E		Interferon beta-1a					
J1830	K		Interferon beta-1b / .25 MG	0910		$81.95		$16.39
J1835	K		Itraconazole injection	9047		$36.93		$7.39
J1840	N		Kanamycin sulfate 500 MG inj					
J1850	N		Kanamycin sulfate 75 MG inj					
J1885	N		Ketorolac tromethamine inj					
J1890	N		Cephalothin sodium injection					
J1931	K		Laronidase injection	9209		$23.16		$4.63
J1940	N		Furosemide injection					
J1950	K		Leuprolide acetate /3.75 MG	0800		$441.78		$88.36
J1955	B		Inj levocarnitine per 1 gm					
J1956	N		Levofloxacin injection					
J1960	N		Levorphanol tartrate inj					
J1980	N		Hyoscyamine sulfate inj					
J1990	N		Chlordiazepoxide injection					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J2001	N		Lidocaine injection					
J2010	N		Lincomycin injection					
J2020	K		Linezolid injection	9001		$24.15		$4.83
J2060	N		Lorazepam injection					
J2150	N		Mannitol injection					
J2175	N		Meperidine hydrochl /100 MG					
J2180	N		Meperidine/promethazine inj					
J2185	N		Meropenem					
J2210	N		Methylergonovin maleate inj					
J2250	N		Inj midazolam hydrochloride					
J2260	N		Inj milrinone lactate / 5 MG					
J2270	N		Morphine sulfate injection					
J2271	N		Morphine so4 injection 100mg					
J2275	N		Morphine sulfate injection					
J2280	N		Inj, moxifloxacin 100 mg					
J2300	N		Inj nalbuphine hydrochloride					
J2310	N		Inj naloxone hydrochloride					
J2320	N		Nandrolone decanoate 50 MG					
J2321	N		Nandrolone decanoate 100 MG					
J2322	N		Nandrolone decanoate 200 MG					
J2324	K		Nesiritide	9114		$75.19		$15.04
J2353	K		Octreotide injection, depot	1207		$87.40		$17.48
J2354	N		Octreotide inj, non-depot					
J2355	K		Oprelvekin injection	7011		$249.06		$49.81
J2357	G		Omalizumab injection	9300		$15.98		$3.20
J2360	N		Orphenadrine injection					
J2370	N		Phenylephrine hcl injection					
J2400	N		Chloroprocaine hcl injection					
J2405	K		Ondansetron hcl injection	0768		$3.80		$0.76
J2410	N		Oxymorphone hcl injection					
J2430	K		Pamidronate disodium /30 MG	0730		$58.42		$11.68
J2440	N		Papaverin hcl injection					
J2460	N		Oxytetracycline injection					
J2469	K		Palonosetron HCl	9210		$18.42		$3.68
J2501	N		Paricalcitol					
J2505	K		Injection, pegfilgrastim 6mg	9119		$2,178.28		$435.66
J2510	N		Penicillin g procaine inj					
J2515	N		Pentobarbital sodium inj					
J2540	N		Penicillin g potassium inj					
J2543	N		Piperacillin/tazobactam					
J2545	Y		Pentamidine isethionte/300mg					
J2550	N		Promethazine hcl injection					
J2560	N		Phenobarbital sodium inj					
J2590	N		Oxytocin injection					
J2597	N		Inj desmopressin acetate					
J2650	N		Prednisolone acetate inj					
J2670	N		Totazoline hcl injection					
J2675	N		Inj progesterone per 50 MG					
J2680	N		Fluphenazine decanoate 25 MG					
J2690	N		Procainamide hcl injection					
J2700	N		Oxacillin sodium injeciton					
J2710	N		Neostigmine methylslfte inj					
J2720	N		Inj protamine sulfate/10 MG					
J2725	N		Inj protirelin per 250 mcg					
J2730	K		Pralidoxime chloride inj	2730		$76.68		$15.34
J2760	N		Phentolaine mesylate inj					
J2765	N		Metoclopramide hcl injection					
J2770	K		Quinupristin/dalfopristin	2770		$105.48		$21.10
J2780	N		Ranitidine hydrochloride inj					
J2783	G		Rasburicase	0738		$109.18		$21.84
J2788	K		Rho d immune globulin 50 mcg	9023		$25.08		$5.02
J2790	K		Rho d immune globulin inj	0884		$113.91		$22.78
J2792	K		Rho(D) immune globulin h, sd	1609		$12.04		$2.41
J2794	G		Risperidone, long acting	9125		$4.71		$0.94
J2795	N		Ropivacaine HCl injection					
J2800	N		Methocarbamol injection					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J2810	N		Inj theophylline per 40 MG					
J2820	K		Sargramostim injection	0731		$21.11		$4.22
J2910	N		Aurothioglucose injeciton					
J2912	N		Sodium chloride injection					
J2916	N		Na ferric gluconate complex					
J2920	N		Methylprednisolone injection					
J2930	N		Methylprednisolone injection					
J2940	K		Somatrem injection	2940		$43.14		$8.63
J2941	K		Somatropin injection	7034		$42.93		$8.59
J2950	N		Promazine hcl injection					
J2993	K		Reteplase injection	9005		$898.81		$179.76
J2995	K		Inj streptokinase /250000 IU	0911		$83.36		$16.67
J2997	K		Alteplase recombinant	7048		$30.65		$6.13
J3000	N		Streptomycin injection					
J3010	N		Fentanyl citrate injeciton					
J3030	K		Sumatriptan succinate / 6 MG	3030		$51.03		$10.21
J3070	N		Pentazocine hcl injection					
J3100	K		Tenecteplase injection	9002		$2,052.77		$410.55
J3105	N		Terbutaline sulfate inj					
J3110	B		Teriparatide injection					
J3120	N		Testosterone enanthate inj					
J3130	N		Testosterone enanthate inj					
J3140	N		Testosterone suspension inj					
J3150	N		Testosteron propionate inj					
J3230	N		Chlorpromazine hcl injection					
J3240	K		Thyrotropin injection	9108		$712.58		$142.52
J3246	K		Tirofiban HCl	7041		$7.89		$1.58
J3250	N		Trimethobenzamide hcl inj					
J3260	N		Tobramycin sulfate injection					
J3265	N		Injection torsemide 10 mg/ml					
J3280	N		Thiethylperazine maleate inj					
J3301	N		Triamcinolone acetonide inj					
J3302	N		Triamcinolone diacetate inj					
J3303	N		Triamcinolone hexacetonl inj					
J3305	K		Inj trimetrexate glucoronate	7045		$139.85		$27.97
J3310	N		Perphenazine injeciton					
J3315	K		Triptorelin pamoate	9122		$369.98		$74.00
J3320	N		Spectinomycn di-hcl inj					
J3350	K		Urea injection	9051	1.0454	$62.04		$12.41
J3360	N		Diazepam injection					
J3364	N		Urokinase 5000 IU injection					
J3365	K		Urokinase 250,000 IU inj	7036		$415.69		$83.14
J3370	N		Vancomycin hcl injection					
J3396	K		Verteporfin injection	1203		$9.16		$1.83
J3400	N		Triflupromazine hcl inj					
J3410	N		Hydroxyzine hcl injection					
J3411	N		Thiamine hcl 100 mg					
J3415	N		Pyridoxine hcl 100 mg					
J3420	N		Vitamin b12 injection					
J3430	N		Vitamin k phytonadione inj					
J3465	K		Injection, voriconazole	1052		$4.63		$0.93
J3470	N		Hyaluronidase injection					
J3475	N		Inj magnesium sulfate					
J3480	N		Inj potassium chloride					
J3485	N		Zidovudine					
J3486	N		Ziprasidone mesylate					
J3487	K		Zoledronic acid	9115		$202.41		$40.48
J3490	N		Drugs unclassified injection					
J3520	E		Edetate disodium per 150 mg					
J3530	N		Nasal vaccine inhalation					
J3535	E		Metered dose inhaler drug					
J3570	E		Laetrile amygdalin vit B17					
J3590	N		Unclassified biologics					
J7030	N		Normal saline solution infus					
J7040	N		Normal saline solution infus					
J7042	N		5% dextrose/normal saline					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J7050	N		Normal saline solution infus					
J7051	N		Sterile saline/water					
J7060	N		5% dextrose/water					
J7070	N		D5w infusion					
J7100	N		Dextran 40 infusion					
J7110	N		Dextran 75 infusion					
J7120	N		Ringers lactate infusion					
J7130	N		Hypertonic saline solution					
J7190	K		Factor viii	0925		$0.51		$0.10
J7191	K		Factor VIII (porcine)	0926		$1.75		$0.35
J7192	K		Factor viii recombinant	0927		$0.94		$0.19
J7193	K		Factor IX non-recombinant	0931		$0.75		$0.15
J7194	K		Factor ix complex	0928		$0.52		$0.10
J7195	K		Factor IX recombinant	0932		$0.86		$0.17
J7197	N		Antithrombin iii injection					
J7198	K		Anti-inhibitor	0929		$1.12		$0.22
J7199	B		Hemophilia clot factor noc					
J7300	E		Intraut copper contraceptive					
J7302	E		Levonorgestrel iu contracept					
J7303	E		Contraceptive vaginal ring					
J7304	E		Contraceptive hormone patch					
J7308	K		Aminolevulinic acid hcl top	7308		$96.79		$19.36
J7310	K		Ganciclovir long act implant	0913		$4,318.68		$863.74
J7317	K		Sodium hyaluronate injection	7316		$110.65		$22.13
J7320	K		Hylan G-F 20 injection	1611		$203.15		$40.63
J7330	B		Cultured chondrocytes implnt					
J7340	E		Metabolic active D/E tissue					
J7342	K		Metabolically active tissue	9054		$15.69		$3.14
J7343	B		Nonmetabolic act d/e tissue					
J7344	K		Nonmetabolic active tissue	9156		$53.76		$10.75
J7350	K		Injectable human tissue	9055		$3.54		$0.71
J7500	N		Azathioprine oral 50mg					
J7501	K		Azathioprine parenteral	0887		$47.40		$9.48
J7502	K		Cyclosporine oral 100 mg	0888		$3.94		$0.79
J7504	K		Lymphocyte immune globulin	0890		$290.30		$58.06
J7505	K		Monoclonal antibodies	7038		$885.36		77.07
J7506	N		Prednisone oral					
J7507	K		Tacrolimus oral per 1 MG	0891		$3.37		$0.67
J7509	N		Methylprednisolone oral					
J7510	N		Prednisolone oral per 5 mg					
J7511	K		Antithymocyte globuln rabbit	9104		$299.47		$59.89
J7513	K		Daclizumab, parenteral	1612		$381.48		$76.30
J7515	K		Cyclosporine oral 25 mg	7515		$1.00		$0.20
J7516	N		Cyclosporin parenteral 250mg					
J7517	K		Mycophenolate mofetil oral	9015		$2.50		$0.50
J7518	G		Mycophenolic acid	9219		$2.47		$0.49
J7520	K		Sirolimus, oral	9020		$6.85		$1.37
J7525	K		Tacrolimus injection	9006		$126.61		$25.32
J7599	N		Immunosuppressive drug noc					
J7608	Y		Acetylcysteine inh sol u d					
J7611	Y		Albuterol concentrated form					
J7612	Y		Levalbuterol concentrated					
J7613	Y		Albuterol unit dose					
J7614	Y		Levalbuterol unit dose					
J7616	Y		Albuterol compound solution					
J7617	Y		Levalbuterol compounded sol					
J7622	A		Beclomethasone inhalatn sol					
J7624	A		Betamethasone inhalation sol					
J7626	A		Budesonide inhalation sol					
J7628	Y		Bitolterol mes inhal sol con					
J7629	Y		Bitolterol mes inh sol u d					
J7631	Y		Cromolyn sodium inh sol u d					
J7633	N		Budesonide concentrated sol					
J7635	Y		Atropine inhal sol con					
J7636	Y		Atropine inhal sol unit dose					
J7637	Y		Dexamethasone inhal sol con					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J7638	Y		Dexamethasone inhal sol u d					
J7639	Y		Dornase alpha inhal sol u d					
J7641	A		Flunisolide, inhalation sol					
J7642	Y		Glycopyrrolate inhal sol con					
J7643	Y		Glycopyrrolate inhal sol u d					
J7644	Y		Ipratropium brom inh sol u d					
J7648	Y		Isoetharine hcl inh sol con					
J7649	Y		Isoetharine hcl inh sol u d					
J7658	Y		Isoproterenolhcl inh sol con					
J7659	Y		Isoproterenol hcl inh sol ud					
J7668	Y		Metaproterenol inh sol con					
J7669	Y		Metaproterenol inh sol u d					
J7674	N		Methacholine chloride, neb					
J7680	Y		Terbutaline so4 inh sol con					
J7681	Y		Terbutaline so4 inh sol u d					
J7682	Y		Tobramycin inhalation sol					
J7683	Y		Triamcinolone inh sol con					
J7684	Y		Triamcinolone inh sol u d					
J7699	Y		Inhalation solution for DME					
J7799	Y		Non-inhalation drug for DME					
J8499	E		Oral prescrip drug non chemo					
J8501	G		Oral aprepitant	0868		$4.75		$0.95
J8510	K		Oral busulfan	7015		$1.98		$0.40
J8520	K		Capecitabine, oral, 150 mg	7042		$3.30		$0.66
J8521	E		Capecitabine, oral, 500 mg					
J8530	N		Cyclophosphamide oral 25 MG					
J8560	K		Etoposide oral 50 MG	0802		$41.12		$8.22
J8565	E		Gefitinib oral					
J8600	N		Melphalan oral 2 MG					
J8610	N		Methotrexate oral 2.5 MG					
J8700	K		Temozolomide	1086		$7.28		$1.46
J8999	B		Oral prescription drug chemo					
J9000	N		Doxorubic hcl 10 MG vl chemo					
J9001	K		Doxorubicin hcl liposome inj	7046		$365.64		$73.13
J9010	K		Alemtuzumab injection	9110		$516.87		$103.37
J9015	K		Aldesleukin/single use vial	0807		$701.76		$140.35
J9017	K		Arsenic trioxide	9012		$33.76		$6.75
J9020	K		Asparaginase injection	0814		$55.42		$11.08
J9031	K		Bcg live intravesical vac	0809		$121.74		$24.35
J9035	G		Bevacizumab injection	9214		$58.17		$11.63
J9040	K		Bleomycin sulfate injection	0857		$54.18		$10.84
J9041	K		Bortezomib injection	9207		$28.90		$5.78
J9045	K		Carboplatin injection	0811		$77.16		$15.43
J9050	K		Carmus bischl nitro inj	0812		$141.29		$28.26
J9055	G		Cetuximab injection	9215		$50.59		$10.12
J9060	N		Cisplatin 10 MG injection					
J9062	B		Cisplatin 50 MG injection					
J9065	K		Inj cladribine per 1 MG	0858		$39.37		$7.87
J9070	N		Cyclophosphamide 100 MG inj					
J9080	B		Cyclophosphamide 200 MG inj					
J9090	B		Cyclophosphamide 500 MG inj					
J9091	B		Cyclophosphamide 1.0 grm inj					
J9092	B		Cyclophosphamide 2.0 grm inj					
J9093	N		Cyclophosphamide lyophilized					
J9094	B		Cyclophosphamide lyophilized					
J9095	B		Cyclophosphamide lyophilized					
J9096	B		Cyclophosphamide lyophilized					
J9097	B		Cyclophosphamide lyophilized					
J9098	K		Cytarabine liposome	1166		$366.43		$73.29
J9100	N		Cytarabine hcl 100 MG inj					
J9110	B		Cytarabine hcl 500 MG inj					
J9120	N		Dactinomycin actinomycin d					
J9130	K		Dacarbazine 100 mg inj	0819		$6.20		$1.24
J9140	B		Dacarbazine 200 MG inj					
J9150	K		Daunorubicin	0820		$35.28		$7.06
J9151	K		Daunorubicin citrate liposom	0821		$57.56		$11.51

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J9160	K		Denileukin diftitox, 300 mcg	1084		$1,235.33		$247.07
J9165	N		Diethylstilbestrol injection					
J9170	K		Docetaxel	0823		$301.17		$60.23
J9178	K		Inj, epirubicin hcl, 2 mg	1167		$25.15		$5.03
J9181	N		Etoposide 10 MG inj					
J9182	B		Etoposide 100 MG inj					
J9185	K		Fludarabine phosphate inj	0842		$262.41		$52.48
J9190	N		Fluorouracil injection					
J9200	K		Floxuridine injection	0827		$60.17		$12.03
J9201	K		Gemcitabine HCl	0828		$117.45		$23.49
J9202	K		Goserelin acetate implant	0810		$196.25		$39.25
J9206	K		Irinotecan injection	0830		$129.08		$25.82
J9208	K		Ifosfomide injection	0831		$53.54		$10.71
J9209	K		Mesna injection	0732		$13.68		$2.74
J9211	K		Idarubicin hcl injection	0832		$314.00		$62.80
J9212	K		Interferon alfacon-1	0912		$3.91		$0.78
J9213	K		Interferon alfa-2a inj	0834		$31.75		$6.35
J9214	K		Interferon alfa-2b inj	0836		$13.22		$2.64
J9215	K		Interferon alfa-n3 inj	0865		$8.77		$1.75
J9216	K		Interferon gamma 1-b inj	0838		$277.79		$55.56
J9217	K		Leuprolide acetate suspnsion	9217		$230.87		$46.17
J9218	K		Leuprolide acetate injeciton	0861		$10.96		$2.19
J9219	K		Leuprolide acetate implant	7051		$2,262.19		$452.44
J9230	N		Mechlorethamine hcl inj					
J9245	K		Inj melphalan hydrochl 50 MG	0840		$523.22		$104.64
J9250	N		Methotrexate sodium inj					
J9260	B		Methotrexate sodium inj					
J9263	B		Oxaliplatin					
J9265	K		Paclitaxel injection	0863		$19.11		$3.82
J9266	K		Pegaspargase/singl dose vial	0843		$1,528.80		$305.76
J9268	K		Pentostatin injection	0844		$1,868.91		$373.78
J9270	K		Plicamycin (mithramycin) inj	0860		$80.54		$16.11
J9280	K		Mitomycin 5 MG inj	0862		$26.36		$5.27
J9290	B		Mitomycin 20 MG inj					
J9291	B		Mitomycin 40 MG inj					
J9293	K		Mitoxantrone hydrochl / 5 MG	0864		$329.69		$65.94
J9300	K		Gemtuzumab ozogamicin	9004		$2,245.04		$449.01
J9305	G		Pemetrexed injection	9213		$41.29		$8.26
J9310	K		Rituximab cancer treatment	0849		$447.97		$89.59
J9320	K		Streptozocin injection	0850		$153.33		$30.67
J9340	K		Thiotepa injection	0851		$44.55		$8.91
J9350	K		Topotecan	0852		$755.51		$151.10
J9355	K		Trastuzumab	1613		$53.98		$10.80
J9357	K		Valrubicin, 200 mg	9167		$376.87		$75.37
J9360	N		Vinblastine sulfate inj					
J9370	N		Vincristine sulfate 1 MG inj					
J9375	B		Vincristine sulfate 2 MG inj					
J9380	B		Vincristine sulfate 5 MG inj					
J9390	K		Vinorelbine tartrate/10 mg	0855		$62.85		$12.57
J9395	K		Injection, Fulvestrant	9120		$82.90		$16.58
J9600	K		Porfimer sodium	0856		$2,457.97		$491.59
J9999	N		Chemotherapy drug					
K0001	Y		Standard wheelchair					
K0002	Y		Stnd hemi (low seat) whlchr					
K0003	Y		Lightweight wheelchair					
K0004	Y		High strength ltwt whlchr					
K0005	Y		Ultralightweight wheelchair					
K0006	Y		Heavy duty wheelchair					
K0007	Y		Extra heavy duty wheelchair					
K0009	Y		Other manual wheelchair/base					
K0010	Y		Stnd wt frame power whlchr					
K0011	Y		Stnd wt pwr whlchr w control					
K0012	Y		Ltwt portbl power whlchr					
K0014	Y		Other power whlchr base					
K0015	Y		Detach non-adjus hght armrst					
K0017	Y		Detach adjust armrest base					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
K0018	Y		Detach adjust armrst upper					
K0019	Y		Arm pad each					
K0020	Y		Fixed adjust armrest pair					
K0037	Y		High mount flip-up footrest					
K0038	Y		Leg strap each					
K0039	Y		Leg strap h style each					
K0040	Y		Adjustable angle footplate					
K0041	Y		Large size footplate each					
K0042	Y		Standard size footplate each					
K0043	Y		Ftrst lower extension tube					
K0044	Y		Ftrst upper hanger bracket					
K0045	Y		Footrest complete assembly					
K0046	Y		Elevat legrst low extension					
K0047	Y		Elevat legrst up hangr brack					
K0050	Y		Ratchet assembly					
K0051	Y		Cam relese assem ftrst/lgrst					
K0052	Y		Swingaway detach footrest					
K0053	Y		Elevate footrest articulate					
K0056	Y		Seat ht <17 or >=21 ltwt wc					
K0064	Y		Zero pressure tube flat free					
K0065	Y		Spoke protectors					
K0066	Y		Solid tire any size each					
K0067	Y		Pneumatic tire any size each					
K0068	Y		Pneumatic tire tube each					
K0069	Y		Rear whl complete solid tire					
K0070	Y		Rear whl compl pneum tire					
K0071	Y		Front castr compl pneum tire					
K0072	Y		Frnt cstr cmpl sem-pneum tir					
K0073	Y		Caster pin lock each					
K0074	Y		Pneumatic caster tire each					
K0075	Y		Semi-pneumatic caster tire					
K0076	Y		Solid caster tire each					
K0077	Y		Front caster assem complete					
K0078	Y		Pneumatic caster tire tube					
K0090	Y		Rear tire power wheelchair					
K0091	Y		Rear tire tube power whlchr					
K0092	Y		Rear assem cmplt powr whlchr					
K0093	Y		Rear zero pressure tire tube					
K0094	Y		Wheel tire for power base					
K0095	Y		Wheel tire tube each base					
K0096	Y		Wheel assem powr base complt					
K0097	Y		Wheel zero presure tire tube					
K0098	Y		Drive belt power wheelchair					
K0099	Y		Pwr wheelchair front caster					
K0102	Y		Crutch and cane holder					
K0104	Y		Cylinder tank carrier					
K0105	Y		Iv hanger					
K0106	Y		Arm trough each					
K0108	Y		W/c component-accessory NOS					
K0195	Y		Elevating whlchair leg rests					
K0415	B		RX antiemetic drg, oral NOS					
K0416	B		Rx antiemetic drg,rectal NOS					
K0452	Y		Wheelchair bearings					
K0455	Y		Pump uninterrupted infusion					
K0462	Y		Temporary replacement eqpmnt					
K0552	Y		Supply/Ext inf pump syr type					
K0600	Y		Functional neuromuscularstim					
K0601	Y		Repl batt silver oxide 1.5 v					
K0602	Y		Repl batt silver oxide 3 v					
K0603	Y		Repl batt alkaline 1.5 v					
K0604	Y		Repl batt lithium 3.6 v					
K0605	Y		Repl batt lithium 4.5 v					
K0606	Y		AED garment w/elec analysis					
K0607	Y		Repl batt for AED					
K0608	Y		Repl garment for AED					
K0609	Y		Repl electrode for AED					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
K0618	A		TLSO 2 piece rigid shell					
K0619	A		TLSO 3 piece rigid shell					
K0620	A		Tubular elastic dressing					
K0628	Y		Mult dens insert direct form					
K0629	Y		Mult dens insert custom mold					
K0630	Y		SIO flex pelvisacral prefab					
K0631	Y		SIO flex pelvisacral custom					
K0632	Y		SIO panel prefab					
K0633	Y		SIO panel custom					
K0634	Y		LO flexibl L1 - below L5 pre					
K0635	Y		LO sag stays/panels pre-fab					
K0636	Y		LO sagitt rigid panel prefab					
K0637	Y		LO flex w/o rigid stays pre					
K0638	Y		LSO flex w/rigid stays cust					
K0639	Y		LSO post rigid panel pre					
K0640	Y		LSO sag-coro rigid frame pre					
K0641	Y		LSO sag-cor rigid frame cust					
K0642	Y		LSO flexion control prefab					
K0643	Y		LSO flexion control custom					
K0644	Y		LSO sagit rigid panel prefab					
K0645	Y		LSO sagittal rigid panel cus					
K0646	Y		LSO sag-coronal panel prefab					
K0647	Y		LSO sag-coronal panel custom					
K0648	Y		LSO s/c shell/panel prefab					
K0649	Y		LSO s/c shell/panel custom					
K0669	Y		W/c seat/back no CVR SADMERC					
K0670	A		Stance phase only					
K0671	Y		Portable oxygen concentrator					
L0100	A		Cranial orthosis/helmet mold					
L0110	A		Cranial orthosis/helmet nonm					
L0112	A		Cranial cervical orthosis					
L0120	A		Cerv flexible non-adjustable					
L0130	A		Flex thermoplastic collar mo					
L0140	A		Cervical semi-rigid adjustab					
L0150	A		Cerv semi-rig adj molded chn					
L0160	A		Cerv semi-rig wire occ/mand					
L0170	A		Cervical collar molded to pt					
L0172	A		Cerv col thermplas foam 2 pi					
L0174	A		Cerv col foam 2 piece w thor					
L0180	A		Cer post col occ/man sup adj					
L0190	A		Cerv collar supp adj cerv ba					
L0200	A		Cerv col supp adj bar & thor					
L0210	A		Thoracic rib belt					
L0220	A		Thor rib belt custom fabrica					
L0430	A		Dewall posture protector					
L0450	A		TLSO flex prefab thoracic					
L0452	A		tlso flex custom fab thoraci					
L0454	A		TLSO flex prefab sacrococ-T9					
L0456	A		TLSO flex prefab					
L0458	A		TLSO 2Mod symphis-xipho pre					
L0460	A		TLSO2Mod symphysis-stern pre					
L0462	A		TLSO 3Mod sacro-scap pre					
L0464	A		TLSO 4Mod sacro-scap pre					
L0466	A		TLSO rigid frame pre soft ap					
L0468	A		TLSO rigid frame prefab pelv					
L0470	A		TLSO rigid frame pre subclav					
L0472	A		TLSO rigid frame hyperex pre					
L0480	A		TLSO rigid plastic custom fa					
L0482	A		TLSO rigid lined custom fab					
L0484	A		TLSO rigid plastic cust fab					
L0486	A		TLSO rigidlined cust fab two					
L0488	A		TLSO rigid lined pre one pie					
L0490	A		TLSO rigid plastic pre one					
L0700	A		Ctlso a-p-l control molded					
L0710	A		Ctlso a-p-l control w/ inter					
L0810	A		Halo cervical into jckt vest					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L0820	A		Halo cervical into body jack					
L0830	A		Halo cerv into milwaukee typ					
L0860	A		Magnetic resonanc image comp					
L0861	A		Halo repl liner/interface					
L0960	E		Post surgical support pads					
L0970	A		Tlso corset front					
L0972	A		Lso corset front					
L0974	A		Tlso full corset					
L0976	A		Lso full corset					
L0978	A		Axillary crutch extension					
L0980	A		Peroneal straps pair					
L0982	A		Stocking supp grips set of f					
L0984	A		Protective body sock each					
L0999	A		Add to spinal orthosis NOS					
L1000	A		Ctlso milwauke initial model					
L1005	A		Tension based scoliosis orth					
L1010	A		Ctlso axilla sling					
L1020	A		Kyphosis pad					
L1025	A		Kyphosis pad floating					
L1030	A		Lumbar bolster pad					
L1040	A		Lumbar or lumbar rib pad					
L1050	A		Sternal pad					
L1060	A		Thoracic pad					
L1070	A		Trapezius sling					
L1080	A		Outrigger					
L1085	A		Outrigger bil w/ vert extens					
L1090	A		Lumbar sling					
L1100	A		Ring flange plastic/leather					
L1110	A		Ring flange plas/leather mol					
L1120	A		Covers for upright each					
L1200	A		Furnsh initial orthosis only					
L1210	A		Lateral thoracic extension					
L1220	A		Anterior thoracic extension					
L1230	A		Milwaukee type superstructur					
L1240	A		Lumbar derotation pad					
L1250	A		Anterior asis pad					
L1260	A		Anterior thoracic derotation					
L1270	A		Abdominal pad					
L1280	A		Rib gusset (elastic) each					
L1290	A		Lateral trochanteric pad					
L1300	A		Body jacket mold to patient					
L1310	A		Post-operative body jacket					
L1499	A		Spinal orthosis NOS					
L1500	A		Thkao mobility frame					
L1510	A		Thkao standing frame					
L1520	A		Thkao swivel walker					
L1600	A		Abduct hip flex frejka w cvr					
L1610	A		Abduct hip flex frejka covr					
L1620	A		Abduct hip flex pavlik harne					
L1630	A		Abduct control hip semi-flex					
L1640	A		Pelv band/spread bar thigh c					
L1650	A		HO abduction hip adjustable					
L1652	A		HO bi thighcuffs w sprdr bar					
L1660	A		HO abduction static plastic					
L1680	A		Pelvic & hip control thigh c					
L1685	A		Post-op hip abduct custom fa					
L1686	A		HO post-op hip abduction					
L1690	A		Combination bilateral HO					
L1700	A		Leg perthes orth toronto typ					
L1710	A		Legg perthes orth newington					
L1720	A		Legg perthes orthosis trilat					
L1730	A		Legg perthes orth scottish r					
L1750	A		Legg perthes sling					
L1755	A		Legg perthes patten bottom t					
L1800	A		Knee orthoses elas w stays					
L1810	A		Ko elastic with joints					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L1815	A		Elastic with condylar pads					
L1820	A		Ko elas w/ condyle pads & jo					
L1825	A		Ko elastic knee cap					
L1830	A		Ko immobilizer canvas longit					
L1831	A		Knee orth pos locking joint					
L1832	A		KO adj jnt pos rigid support					
L1834	A		Ko w/0 joint rigid molded to					
L1836	A		Rigid KO wo joints					
L1840	A		Ko derot ant cruciate custom					
L1843	A		KO single upright custom fit					
L1844	A		Ko w/adj jt rot cntrl molded					
L1845	A		Ko w/ adj flex/ext rotat cus					
L1846	A		Ko w adj flex/ext rotat mold					
L1847	A		KO adjustable w air chambers					
L1850	A		Ko swedish type					
L1855	A		Ko plas doub upright jnt mol					
L1858	A		Ko polycentric pneumatic pad					
L1860	A		Ko supracondylar socket mold					
L1870	A		Ko doub upright lacers molde					
L1880	A		Ko doub upright cuffs/lacers					
L1900	A		Afo sprng wir drsflx calf bd					
L1901	A		Prefab ankle orthosis					
L1902	A		Afo ankle gauntlet					
L1904	A		Afo molded ankle gauntlet					
L1906	A		Afo multiligamentus ankle su					
L1907	A		AFO supramalleolar custom					
L1910	A		Afo sing bar clasp attach sh					
L1920	A		Afo sing upright w/ adjust s					
L1930	A		Afo plastic					
L1932	A		Afo rig ant tib prefab TCF/=					
L1940	A		Afo molded to patient plasti					
L1945	A		Afo molded plas rig ant tib					
L1950	A		Afo spiral molded to pt plas					
L1951	A		AFO spiral prefabricated					
L1960	A		Afo pos solid ank plastic mo					
L1970	A		Afo plastic molded w/ankle j					
L1971	A		AFO w/ankle joint, prefab					
L1980	A		Afo sing solid stirrup calf					
L1990	A		Afo doub solid stirrup calf					
L2000	A		Kafo sing fre stirr thi/calf					
L2005	A		KAFO sng/dbl mechanical act					
L2010	A		Kafo sng solid stirrup w/o j					
L2020	A		Kafo dbl solid stirrup band/					
L2030	A		Kafo dbl solid stirrup w/o j					
L2035	A		KAFO plastic pediatric size					
L2036	A		Kafo plas doub free knee mol					
L2037	A		Kafo plas sing free knee mol					
L2038	A		Kafo w/o joint multi-axis an					
L2039	A		KAFO,plstic,medlat rotat con					
L2040	A		Hkafo torsion bil rot straps					
L2050	A		Hkafo torsion cable hip pelv					
L2060	A		Hkafo torsion ball bearing j					
L2070	A		Hkafo torsion unilat rot str					
L2080	A		Hkafo unilat torsion cable					
L2090	A		Hkafo unilat torsion ball br					
L2106	A		Afo tib fx cast plaster mold					
L2108	A		Afo tib fx cast molded to pt					
L2112	A		Afo tibial fracture soft					
L2114	A		Afo tib fx semi-rigid					
L2116	A		Afo tibial fracture rigid					
L2126	A		Kafo fem fx cast thermoplas					
L2128	A		Kafo fem fx cast molded to p					
L2132	A		Kafo femoral fx cast soft					
L2134	A		Kafo fem fx cast semi-rigid					
L2136	A		Kafo femoral fx cast rigid					
L2180	A		Plas shoe insert w ank joint					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L2182	A		Drop lock knee					
L2184	A		Limited motion knee joint					
L2186	A		Adj motion knee jnt lerman t					
L2188	A		Quadrilateral brim					
L2190	A		Waist belt					
L2192	A		Pelvic band & belt thigh fla					
L2200	A		Limited ankle motion ea jnt					
L2210	A		Dorsiflexion assist each joi					
L2220	A		Dorsi & plantar flex ass/res					
L2230	A		Split flat caliper stirr & p					
L2232	A		Rocker bottom, contact AFO					
L2240	A		Round caliper and plate atta					
L2250	A		Foot plate molded stirrup at					
L2260	A		Reinforced solid stirrup					
L2265	A		Long tongue stirrup					
L2270	A		Varus/valgus strap padded/li					
L2275	A		Plastic mod low ext pad/line					
L2280	A		Molded inner boot					
L2300	A		Abduction bar jointed adjust					
L2310	A		Abduction bar-straight					
L2320	A		Non-molded lacer					
L2330	A		Lacer molded to patient mode					
L2335	A		Anterior swing band					
L2340	A		Pre-tibial shell molded to p					
L2350	A		Prosthetic type socket molde					
L2360	A		Extended steel shank					
L2370	A		Patten bottom					
L2375	A		Torsion ank & half solid sti					
L2380	A		Torsion straight knee joint					
L2385	A		Straight knee joint heavy du					
L2390	A		Offset knee joint each					
L2395	A		Offset knee joint heavy duty					
L2397	A		Suspension sleeve lower ext					
L2405	A		Knee joint drop lock ea jnt					
L2415	A		Knee joint cam lock each joi					
L2425	A		Knee disc/dial lock/adj flex					
L2430	A		Knee jnt ratchet lock ea jnt					
L2492	A		Knee lift loop drop lock rin					
L2500	A		Thi/glut/ischia wgt bearing					
L2510	A		Th/wght bear quad-lat brim m					
L2520	A		Th/wght bear quad-lat brim c					
L2525	A		Th/wght bear nar m-l brim mo					
L2526	A		Th/wght bear nar m-l brim cu					
L2530	A		Thigh/wght bear lacer non-mo					
L2540	A		Thigh/wght bear lacer molded					
L2550	A		Thigh/wght bear high roll cu					
L2570	A		Hip clevis type 2 posit jnt					
L2580	A		Pelvic control pelvic sling					
L2600	A		Hip clevis/thrust bearing fr					
L2610	A		Hip clevis/thrust bearing lo					
L2620	A		Pelvic control hip heavy dut					
L2622	A		Hip joint adjustable flexion					
L2624	A		Hip adj flex ext abduct cont					
L2627	A		Plastic mold recipro hip & c					
L2628	A		Metal frame recipro hip & ca					
L2630	A		Pelvic control band & belt u					
L2640	A		Pelvic control band & belt b					
L2650	A		Pelv & thor control gluteal					
L2660	A		Thoracic control thoracic ba					
L2670	A		Thorac cont paraspinal uprig					
L2680	A		Thorac cont lat support upri					
L2750	A		Plating chrome/nickel pr bar					
L2755	A		Carbon graphite lamination					
L2760	A		Extension per extension per					
L2768	A		Ortho sidebar disconnect					
L2770	A		Low ext orthosis per bar/jnt					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L2780	A		Non-corrosive finish					
L2785	A		Drop lock retainer each					
L2795	A		Knee control full kneecap					
L2800	A		Knee cap medial or lateral p					
L2810	A		Knee control condylar pad					
L2820	A		Soft interface below knee se					
L2830	A		Soft interface above knee se					
L2840	A		Tibial length sock fx or equ					
L2850	A		Femoral lgth sock fx or equa					
L2860	A		Torsion mechanism knee/ankle					
L2999	A		Lower extremity orthosis NOS					
L3000	B		Ft insert ucb berkeley shell					
L3001	B		Foot insert remov molded spe					
L3002	B		Foot insert plastazote or eq					
L3003	B		Foot insert silicone gel eac					
L3010	B		Foot longitudinal arch suppo					
L3020	B		Foot longitud/metatarsal sup					
L3030	B		Foot arch support remov prem					
L3031	E		Foot lamin/prepreg composite					
L3040	B		Ft arch suprt premold longit					
L3050	B		Foot arch supp premold metat					
L3060	B		Foot arch supp longitud/meta					
L3070	B		Arch suprt att to sho longit					
L3080	B		Arch supp att to shoe metata					
L3090	B		Arch supp att to shoe long/m					
L3100	B		Hallus-valgus nght dynamic s					
L3140	B		Abduction rotation bar shoe					
L3150	B		Abduct rotation bar w/o shoe					
L3160	B		Shoe styled positioning dev					
L3170	B		Foot plastic heel stabilizer					
L3201	B		Oxford w supinat/pronat inf					
L3202	B		Oxford w/ supinat/pronator c					
L3203	B		Oxford w/ supinator/pronator					
L3204	B		Hightop w/ supp/pronator inf					
L3206	B		Hightop w/ supp/pronator chi					
L3207	B		Hightop w/ supp/pronator jun					
L3208	B		Surgical boot each infant					
L3209	B		Surgical boot each child					
L3211	B		Surgical boot each junior					
L3212	B		Benesch boot pair infant					
L3213	B		Benesch boot pair child					
L3214	B		Benesch boot pair junior					
L3215	B		Orthopedic ftwear ladies oxf					
L3216	B		Orthoped ladies shoes dpth i					
L3217	B		Ladies shoes hightop depth i					
L3219	B		Orthopedic mens shoes oxford					
L3221	B		Orthopedic mens shoes dpth i					
L3222	B		Mens shoes hightop depth inl					
L3224	A		Womans shoe oxford brace					
L3225	A		Mans shoe oxford brace					
L3230	B		Custom shoes depth inlay					
L3250	B		Custom mold shoe remov prost					
L3251	B		Shoe molded to pt silicone s					
L3252	B		Shoe molded plastazote cust					
L3253	B		Shoe molded plastazote cust					
L3254	B		Orth foot non-stndard size/w					
L3255	B		Orth foot non-standard size/					
L3257	B		Orth foot add charge split s					
L3260	B		Ambulatory surgical boot eac					
L3265	B		Plastazote sandal each					
L3300	B		Sho lift taper to metatarsal					
L3310	B		Shoe lift elev heel/sole neo					
L3320	B		Shoe lift elev heel/sole cor					
L3330	B		Lifts elevation metal extens					
L3332	B		Shoe lifts tapered to one-ha					
L3334	B		Shoe lifts elevation heel /i					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3340	B		Shoe wedge sach					
L3350	B		Shoe heel wedge					
L3360	B		Shoe sole wedge outside sole					
L3370	B		Shoe sole wedge between sole					
L3380	B		Shoe clubfoot wedge					
L3390	B		Shoe outflare wedge					
L3400	B		Shoe metatarsal bar wedge ro					
L3410	B		Shoe metatarsal bar between					
L3420	B		Full sole/heel wedge btween					
L3430	B		Sho heel count plast reinfor					
L3440	B		Heel leather reinforced					
L3450	B		Shoe heel sach cushion type					
L3455	B		Shoe heel new leather standa					
L3460	B		Shoe heel new rubber standar					
L3465	B		Shoe heel thomas with wedge					
L3470	B		Shoe heel thomas extend to b					
L3480	B		Shoe heel pad & depress for					
L3485	B		Shoe heel pad removable for					
L3500	B		Ortho shoe add leather insol					
L3510	B		Orthopedic shoe add rub insl					
L3520	B		O shoe add felt w leath insl					
L3530	B		Ortho shoe add half sole					
L3540	B		Ortho shoe add full sole					
L3550	B		O shoe add standard toe tap					
L3560	B		O shoe add horseshoe toe tap					
L3570	B		O shoe add instep extension					
L3580	B		O shoe add instep velcro clo					
L3590	B		O shoe convert to sof counte					
L3595	B		Ortho shoe add march bar					
L3600	B		Trans shoe calip plate exist					
L3610	B		Trans shoe caliper plate new					
L3620	B		Trans shoe solid stirrup exi					
L3630	B		Trans shoe solid stirrup new					
L3640	B		Shoe dennis browne splint bo					
L3649	B		Orthopedic shoe modifica NOS					
L3650	A		Shlder fig 8 abduct restrain					
L3651	A		Prefab shoulder orthosis					
L3652	A		Prefab dbl shoulder orthosis					
L3660	A		Abduct restrainer canvas&web					
L3670	A		Acromio/clavicular canvas&we					
L3675	A		Canvas vest SO					
L3677	E		SO hard plastic stabilizer					
L3700	A		Elbow orthoses elas w stays					
L3701	A		Prefab elbow orthosis					
L3710	A		Elbow elastic with metal joi					
L3720	A		Forearm/arm cuffs free motio					
L3730	A		Forearm/arm cuffs ext/flex a					
L3740	A		Cuffs adj lock w/ active con					
L3760	A		EO withjoint, Prefabricated					
L3762	A		Rigid EO wo joints					
L3800	A		Whfo short opponen no attach					
L3805	A		Whfo long opponens no attach					
L3807	A		WHFO,no joint, prefabricated					
L3810	A		Whfo thumb abduction bar					
L3815	A		Whfo second m.p. abduction a					
L3820	A		Whfo ip ext asst w/ mp ext s					
L3825	A		Whfo m.p. extension stop					
L3830	A		Whfo m.p. extension assist					
L3835	A		Whfo m.p. spring extension a					
L3840	A		Whfo spring swivel thumb					
L3845	A		Whfo thumb ip ext ass w/ mp					
L3850	A		Action wrist w/ dorsiflex as					
L3855	A		Whfo adj m.p. flexion contro					
L3860	A		Whfo adj m.p. flex ctrl & i					
L3890	B		Torsion mechanism wrist/elbo					
L3900	A		Hinge extension/flex wrist/f					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3901	A		Hinge ext/flex wrist finger					
L3902	E		Whfo ext power compress gas					
L3904	A		Whfo electric custom fitted					
L3906	A		Wrist gauntlet molded to pt					
L3907	A		Whfo wrst gauntlt thmb spica					
L3908	A		Wrist cock-up non-molded					
L3909	A		Prefab wrist orthosis					
L3910	A		Whfo swanson design					
L3911	A		Prefab hand finger orthosis					
L3912	A		Flex glove w/elastic finger					
L3914	A		WHO wrist extension cock-up					
L3916	A		Whfo wrist extens w/ outrigg					
L3917	A		Prefab metacarpl fx orthosis					
L3918	A		HFO knuckle bender					
L3920	A		Knuckle bender with outrigge					
L3922	A		Knuckle bend 2 seg to flex j					
L3923	A		HFO, no joint, prefabricated					
L3924	A		Oppenheimer					
L3926	A		Thomas suspension					
L3928	A		Finger extension w/ clock sp					
L3930	A		Finger extension with wrist					
L3932	A		Safety pin spring wire					
L3934	A		Safety pin modified					
L3936	A		Palmer					
L3938	A		Dorsal wrist					
L3940	A		Dorsal wrist w/ outrigger at					
L3942	A		Reverse knuckle bender					
L3944	A		Reverse knuckle bend w/ outr					
L3946	A		HFO composite elastic					
L3948	A		Finger knuckle bender					
L3950	A		Oppenheimer w/ knuckle bend					
L3952	A		Oppenheimer w/ rev knuckle 2					
L3954	A		Spreading hand					
L3956	A		Add joint upper ext orthosis					
L3960	A		Sewho airplan desig abdu pos					
L3962	A		Sewho erbs palsey design abd					
L3963	A		Molded w/ articulating elbow					
L3964	Y		Seo mobile arm sup att to wc					
L3965	Y		Arm supp att to wc rancho ty					
L3966	Y		Mobile arm supports reclinin					
L3968	Y		Friction dampening arm supp					
L3969	Y		Monosuspension arm/hand supp					
L3970	Y		Elevat proximal arm support					
L3972	Y		Offset/lat rocker arm w/ ela					
L3974	Y		Mobile arm support supinator					
L3980	A		Upp ext fx orthosis humeral					
L3982	A		Upper ext fx orthosis rad/ul					
L3984	A		Upper ext fx orthosis wrist					
L3985	A		Forearm hand fx orth w/ wr h					
L3986	A		Humeral rad/ulna wrist fx or					
L3995	A		Sock fracture or equal each					
L3999	A		Upper limb orthosis NOS					
L4000	A		Repl girdle milwaukee orth					
L4002	A		Replace strap, any orthosis					
L4010	A		Replace trilateral socket br					
L4020	A		Replace quadlat socket brim					
L4030	A		Replace socket brim cust fit					
L4040	A		Replace molded thigh lacer					
L4045	A		Replace non-molded thigh lac					
L4050	A		Replace molded calf lacer					
L4055	A		Replace non-molded calf lace					
L4060	A		Replace high roll cuff					
L4070	A		Replace prox & dist upright					
L4080	A		Repl met band kafo-afo prox					
L4090	A		Repl met band kafo-afo calf/					
L4100	A		Repl leath cuff kafo prox th					

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CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L4110	A		Repl leath cuff kafo-afo cal					
L4130	A		Replace pretibial shell					
L4205	A		Ortho dvc repair per 15 min					
L4210	A		Orth dev repair/repl minor p					
L4350	A		Ankle control orthosi prefab					
L4360	A		Pneumati walking boot prefab					
L4370	A		Pneumatic full leg splint					
L4380	A		Pneumatic knee splint					
L4386	A		Non-pneum walk boot prefab					
L4392	A		Replace AFO soft interface					
L4394	A		Replace foot drop spint					
L4396	A		Static AFO					
L4398	A		Foot drop splint recumbent					
L5000	A		Sho insert w arch toe filler					
L5010	A		Mold socket ank hgt w/ toe f					
L5020	A		Tibial tubercle hgt w/ toe f					
L5050	A		Ank symes mold sckt sach ft					
L5060	A		Symes met fr leath socket ar					
L5100	A		Molded socket shin sach foot					
L5105	A		Plast socket jts/thgh lacer					
L5150	A		Mold sckt ext knee shin sach					
L5160	A		Mold socket bent knee shin s					
L5200	A		Kne sing axis fric shin sach					
L5210	A		No knee/ankle joints w/ ft b					
L5220	A		No knee joint with artic ali					
L5230	A		Fem focal defic constant fri					
L5250	A		Hip canad sing axi cons fric					
L5270	A		Tilt table locking hip sing					
L5280	A		Hemipelvect canad sing axis					
L5301	A		BK mold socket SACH ft endo					
L5311	A		Knee disart, SACH ft, endo					
L5321	A		AK open end SACH					
L5331	A		Hip disart canadian SACH ft					
L5341	A		Hemipelvectomy canadian SACH					
L5400	A		Postop dress & 1 cast chg bk					
L5410	A		Postop dsg bk ea add cast ch					
L5420	A		Postop dsg & 1 cast chg ak/d					
L5430	A		Postop dsg ak ea add cast ch					
L5450	A		Postop app non-wgt bear dsg					
L5460	A		Postop app non-wgt bear dsg					
L5500	A		Init bk ptb plaster direct					
L5505	A		Init ak ischal plstr direct					
L5510	A		Prep BK ptb plaster molded					
L5520	A		Perp BK ptb thermopls direct					
L5530	A		Prep BK ptb thermopls molded					
L5535	A		Prep BK ptb open end socket					
L5540	A		Prep BK ptb laminated socket					
L5560	A		Prep AK ischial plast molded					
L5570	A		Prep AK ischial direct form					
L5580	A		Prep AK ischial thermo mold					
L5585	A		Prep AK ischial open end					
L5590	A		Prep AK ischial laminated					
L5595	A		Hip disartic sach thermopls					
L5600	A		Hip disart sach laminat mold					
L5610	A		Above knee hydracadence					
L5611	A		Ak 4 bar link w/fric swing					
L5613	A		Ak 4 bar ling w/hydraul swig					
L5614	A		4-bar link above knee w/swng					
L5616	A		Ak univ multiplex sys frict					
L5617	A		AK/BK self-aligning unit ea					
L5618	A		Test socket symes					
L5620	A		Test socket below knee					
L5622	A		Test socket knee disarticula					
L5624	A		Test socket above knee					
L5626	A		Test socket hip disarticulat					
L5628	A		Test socket hemipelvectomy					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5629	A		Below knee acrylic socket					
L5630	A		Syme typ expandabl wall sckt					
L5631	A		Ak/knee disartic acrylic soc					
L5632	A		Symes type ptb brim design s					
L5634	A		Symes type poster opening so					
L5636	A		Symes type medial opening so					
L5637	A		Below knee total contact					
L5638	A		Below knee leather socket					
L5639	A		Below knee wood socket					
L5640	A		Knee disarticulat leather so					
L5642	A		Above knee leather socket					
L5643	A		Hip flex inner socket ext fr					
L5644	A		Above knee wood socket					
L5645	A		Bk flex inner socket ext fra					
L5646	A		Below knee cushion socket					
L5647	A		Below knee suction socket					
L5648	A		Above knee cushion socket					
L5649	A		Isch containmt/narrow m-l so					
L5650	A		Tot contact ak/knee disart s					
L5651	A		Ak flex inner socket ext fra					
L5652	A		Suction susp ak/knee disart					
L5653	A		Knee disart expand wall sock					
L5654	A		Socket insert symes					
L5655	A		Socket insert below knee					
L5656	A		Socket insert knee articulat					
L5658	A		Socket insert above knee					
L5661	A		Multi-durometer symes					
L5665	A		Multi-durometer below knee					
L5666	A		Below knee cuff suspension					
L5668	A		Socket insert w/o lock lower					
L5670	A		Bk molded supracondylar susp					
L5671	A		BK/AK locking mechanism					
L5672	A		Bk removable medial brim sus					
L5673	A		Socket insert w lock mech					
L5676	A		Bk knee joints single axis p					
L5677	A		Bk knee joints polycentric p					
L5678	A		Bk joint covers pair					
L5679	A		Socket insert w/o lock mech					
L5680	A		Bk thigh lacer non-molded					
L5681	A		Intl custm cong/latyp insert					
L5682	A		Bk thigh lacer glut/ischia m					
L5683	A		Initial custom socket insert					
L5684	A		Bk fork strap					
L5685	A		Below knee sus/seal sleeve					
L5686	A		Bk back check					
L5688	A		Bk waist belt webbing					
L5690	A		Bk waist belt padded and lin					
L5692	A		Ak pelvic control belt light					
L5694	A		Ak pelvic control belt pad/l					
L5695	A		Ak sleeve susp neoprene/equa					
L5696	A		Ak/knee disartic pelvic join					
L5697	A		Ak/knee disartic pelvic band					
L5698	A		Ak/knee disartic silesian ba					
L5699	A		Shoulder harness					
L5700	A		Replace socket below knee					
L5701	A		Replace socket above knee					
L5702	A		Replace socket hip					
L5704	A		Custom shape cover BK					
L5705	A		Custom shape cover AK					
L5706	A		Custom shape cvr knee disart					
L5707	A		Custom shape cvr hip disart					
L5710	A		Kne-shin exo sng axi mnl loc					
L5711	A		Knee-shin exo mnl lock ultra					
L5712	A		Knee-shin exo frict swg & st					
L5714	A		Knee-shin exo variable frict					
L5716	A		Knee-shin exo mech stance ph					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5718	A		Knee-shin exo frct swg & sta					
L5722	A		Knee-shin pneum swg frct exo					
L5724	A		Knee-shin exo fluid swing ph					
L5726	A		Knee-shin ext jnts fld swg e					
L5728	A		Knee-shin fluid swg & stance					
L5780	A		Knee-shin pneum/hydra pneum					
L5781	A		Lower limb pros vacuum pump					
L5782	A		HD low limb pros vacuum pump					
L5785	A		Exoskeletal bk ultralt mater					
L5790	A		Exoskeletal ak ultra-light m					
L5795	A		Exoskel hip ultra-light mate					
L5810	A		Endoskel knee-shin mnl lock					
L5811	A		Endo knee-shin mnl lck ultra					
L5812	A		Endo knee-shin frct swg & st					
L5814	A		Endo knee-shin hydral swg ph					
L5816	A		Endo knee-shin polyc mch sta					
L5818	A		Endo knee-shin frct swg & st					
L5822	A		Endo knee-shin pneum swg frc					
L5824	A		Endo knee-shin fluid swing p					
L5826	A		Miniature knee joint					
L5828	A		Endo knee-shin fluid swg/sta					
L5830	A		Endo knee-shin pneum/swg pha					
L5840	A		Multi-axial knee/shin system					
L5845	A		Knee-shin sys stance flexion					
L5848	A		Knee-shin sys hydraul stance					
L5850	A		Endo ak/hip knee extens assi					
L5855	A		Mech hip extension assist					
L5856	A		Elec knee-shin swing/stance					
L5857	A		Elec knee-shin swing only					
L5910	A		Endo below knee alignable sy					
L5920	A		Endo ak/hip alignable system					
L5925	A		Above knee manual lock					
L5930	A		High activity knee frame					
L5940	A		Endo bk ultra-light material					
L5950	A		Endo ak ultra-light material					
L5960	A		Endo hip ultra-light materia					
L5962	A		Below knee flex cover system					
L5964	A		Above knee flex cover system					
L5966	A		Hip flexible cover system					
L5968	A		Multiaxial ankle w dorsiflex					
L5970	A		Foot external keel sach foot					
L5972	A		Flexible keel foot					
L5974	A		Foot single axis ankle/foot					
L5975	A		Combo ankle/foot prosthesis					
L5976	A		Energy storing foot					
L5978	A		Ft prosth multiaxial ankl/ft					
L5979	A		Multi-axial ankle/ft prosth					
L5980	A		Flex foot system					
L5981	A		Flex-walk sys low ext prosth					
L5982	A		Exoskeletal axial rotation u					
L5984	A		Endoskeletal axial rotation					
L5985	A		Lwr ext dynamic prosth pylon					
L5986	A		Multi-axial rotation unit					
L5987	A		Shank ft w vert load pylon					
L5988	A		Vertical shock reducing pylo					
L5990	A		User adjustable heel height					
L5995	A		Lower ext pros heavyduty fea					
L5999	A		Lowr extremity prosthes NOS					
L6000	A		Par hand robin-aids thum rem					
L6010	A		Hand robin-aids little/ring					
L6020	A		Part hand robin-aids no fing					
L6025	A		Part hand disart myoelectric					
L6050	A		Wrst MLd sck flx hng tri pad					
L6055	A		Wrst mold sock w/exp interfa					
L6100	A		Elb mold sock flex hinge pad					
L6110	A		Elbow mold sock suspension t					

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CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6120	A		Elbow mold doub splt soc ste					
L6130	A		Elbow stump activated lock h					
L6200	A		Elbow mold outsid lock hinge					
L6205	A		Elbow molded w/ expand inter					
L6250	A		Elbow inter loc elbow forarm					
L6300	A		Shlder disart int lock elbow					
L6310	A		Shoulder passive restor comp					
L6320	A		Shoulder passive restor cap					
L6350	A		Thoracic intern lock elbow					
L6360	A		Thoracic passive restor comp					
L6370	A		Thoracic passive restor cap					
L6380	A		Postop dsg cast chg wrst/elb					
L6382	A		Postop dsg cast chg elb dis/					
L6384	A		Postop dsg cast chg shlder/t					
L6386	A		Postop ea cast chg & realign					
L6388	A		Postop applicat rigid dsg on					
L6400	A		Below elbow prosth tiss shap					
L6450	A		Elb disart prosth tiss shap					
L6500	A		Above elbow prosth tiss shap					
L6550	A		Shldr disar prosth tiss shap					
L6570	A		Scap thorac prosth tiss shap					
L6580	A		Wrist/elbow bowden cable mol					
L6582	A		Wrist/elbow bowden cbl dir f					
L6584	A		Elbow fair lead cable molded					
L6586	A		Elbow fair lead cable dir fo					
L6588	A		Shdr fair lead cable molded					
L6590	A		Shdr fair lead cable direct					
L6600	A		Polycentric hinge pair					
L6605	A		Single pivot hinge pair					
L6610	A		Flexible metal hinge pair					
L6615	A		Disconnect locking wrist uni					
L6616	A		Disconnect insert locking wr					
L6620	A		Flexion/extension wrist unit					
L6623	A		Spring-ass rot wrst w/ latch					
L6625	A		Rotation wrst w/ cable lock					
L6628	A		Quick disconn hook adapter o					
L6629	A		Lamination collar w/ couplin					
L6630	A		Stainless steel any wrist					
L6632	A		Latex suspension sleeve each					
L6635	A		Lift assist for elbow					
L6637	A		Nudge control elbow lock					
L6638	A		Elec lock on manual pw elbow					
L6640	A		Shoulder abduction joint pai					
L6641	A		Excursion amplifier pulley t					
L6642	A		Excursion amplifier lever ty					
L6645	A		Shoulder flexion-abduction j					
L6646	A		Multipo locking shoulder jnt					
L6647	A		Shoulder lock actuator					
L6648	A		Ext pwrd shlder lock/unlock					
L6650	A		Shoulder universal joint					
L6655	A		Standard control cable extra					
L6660	A		Heavy duty control cable					
L6665	A		Teflon or equal cable lining					
L6670	A		Hook to hand cable adapter					
L6672	A		Harness chest/shlder saddle					
L6675	A		Harness figure of 8 sing con					
L6676	A		Harness figure of 8 dual con					
L6680	A		Test sock wrist disart/bel e					
L6682	A		Test sock elbw disart/above					
L6684	A		Test socket shldr disart/tho					
L6686	A		Suction socket					
L6687	A		Frame typ socket bel elbow/w					
L6688	A		Frame typ sock above elb/dis					
L6689	A		Frame typ socket shoulder di					
L6690	A		Frame typ sock interscap-tho					
L6691	A		Removable insert each					

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CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6692	A		Silicone gel insert or equal					
L6693	A		Lockingelbow forearm cntrbal					
L6694	A		Elbow socket ins use w/lock					
L6695	A		Elbow socket ins use w/o lck					
L6696	A		Cus elbo skt in for con/atyp					
L6697	A		Cus elbo skt in not con/atyp					
L6698	A		Below/above elbow lock mech					
L6700	A		Terminal device model #3					
L6705	A		Terminal device model #5					
L6710	A		Terminal device model #5x					
L6715	A		Terminal device model #5xa					
L6720	A		Terminal device model #6					
L6725	A		Terminal device model #7					
L6730	A		Terminal device model #7lo					
L6735	A		Terminal device model #8					
L6740	A		Terminal device model #8x					
L6745	A		Terminal device model #88x					
L6750	A		Terminal device model #10p					
L6755	A		Terminal device model #10x					
L6765	A		Terminal device model #12p					
L6770	A		Terminal device model #99x					
L6775	A		Terminal device model #555					
L6780	A		Terminal device model #ss555					
L6790	A		Hooks-accu hook or equal					
L6795	A		Hooks-2 load or equal					
L6800	A		Hooks-aprl vc or equal					
L6805	A		Modifier wrist flexion unit					
L6806	A		Trs grip vc or equal					
L6807	A		Term device grip1/2 or equal					
L6808	A		Term device infant or child					
L6809	A		Trs super sport passive					
L6810	A		Pincher tool otto bock or eq					
L6825	A		Hands dorrance vo					
L6830	A		Hand aprl vc					
L6835	A		Hand sierra vo					
L6840	A		Hand becker imperial					
L6845	A		Hand becker lock grip					
L6850	A		Term dvc-hand becker plylite					
L6855	A		Hand robin-aids vo					
L6860	A		Hand robin-aids vo soft					
L6865	A		Hand passive hand					
L6867	A		Hand detroit infant hand					
L6868	A		Passive inf hand steeper/hos					
L6870	A		Hand child mitt					
L6872	A		Hand nyu child hand					
L6873	A		Hand mech inf steeper or equ					
L6875	A		Hand bock vc					
L6880	A		Hand bock vo					
L6881	A		Autograsp feature ul term dv					
L6882	A		Microprocessor control uplmb					
L6890	A		Production glove					
L6895	A		Custom glove					
L6900	A		Hand restorat thumb/1 finger					
L6905	A		Hand restoration multiple fi					
L6910	A		Hand restoration no fingers					
L6915	A		Hand restoration replacmnt g					
L6920	A		Wrist disarticul switch ctrl					
L6925	A		Wrist disart myoelectronic c					
L6930	A		Below elbow switch control					
L6935	A		Below elbow myoelectronic ct					
L6940	A		Elbow disarticulation switch					
L6945	A		Elbow disart myoelectronic c					
L6950	A		Above elbow switch control					
L6955	A		Above elbow myoelectronic ct					
L6960	A		Shldr disartic switch contro					
L6965	A		Shldr disartic myoelectronic					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6970	A		Interscapular-thor switch ct					
L6975	A		Interscap-thor myoelectronic					
L7010	A		Hand otto back steeper/eq sw					
L7015	A		Hand sys teknik village swit					
L7020	A		Electronic greifer switch ct					
L7025	A		Electron hand myoelectronic					
L7030	A		Hand sys teknik vill myoelec					
L7035	A		Electron greifer myoelectro					
L7040	A		Prehensile actuator hosmer s					
L7045	A		Electron hook child michigan					
L7170	A		Electronic elbow hosmer swit					
L7180	A		Electronic elbow utah myoele					
L7181	A		Electronic elbo simultaneous					
L7185	A		Electron elbow adolescent sw					
L7186	A		Electron elbow child switch					
L7190	A		Elbow adolescent myoelectron					
L7191	A		Elbow child myoelectronic ct					
L7260	A		Electron wrist rotator otto					
L7261	A		Electron wrist rotator utah					
L7266	A		Servo control steeper or equ					
L7272	A		Analogue control unb or equa					
L7274	A		Proportional ctl 12 volt uta					
L7360	A		Six volt bat otto bock/eq ea					
L7362	A		Battery chrgr six volt otto					
L7364	A		Twelve volt battery utah/equ					
L7366	A		Battery chrgr 12 volt utah/e					
L7367	A		Replacemnt lithium ionbatter					
L7368	A		Lithium ion battery charger					
L7499	A		Upper extremity prosthes NOS					
L7500	A		Prosthetic dvc repair hourly					
L7510	A		Prosthetic device repair rep					
L7520	A		Repair prosthesis per 15 min					
L7900	A		Male vacuum erection system					
L8000	A		Mastectomy bra					
L8001	A		Breast prosthesis bra & form					
L8002	A		Brst prsth bra & bilat form					
L8010	A		Mastectomy sleeve					
L8015	A		Ext breastprosthesis garment					
L8020	A		Mastectomy form					
L8030	A		Breast prosthesis silicone/e					
L8035	A		Custom breast prosthesis					
L8039	A		Breast prosthesis NOS					
L8040	A		Nasal prosthesis					
L8041	A		Midfacial prosthesis					
L8042	A		Orbital prosthesis					
L8043	A		Upper facial prosthesis					
L8044	A		Hemi-facial prosthesis					
L8045	A		Auricular prosthesis					
L8046	A		Partial facial prosthesis					
L8047	A		Nasal septal prosthesis					
L8048	A		Unspec maxillofacial prosth					
L8049	A		Repair maxillofacial prosth					
L8100	E		Compression stocking BK18-30					
L8110	A		Compression stocking BK30-40					
L8120	A		Compression stocking BK40-50					
L8130	E		Gc stocking thighlngth 18-30					
L8140	E		Gc stocking thighlngth 30-40					
L8150	E		Gc stocking thighlngth 40-50					
L8160	E		Gc stocking full lngth 18-30					
L8170	E		Gc stocking full lngth 30-40					
L8180	E		Gc stocking full lngth 40-50					
L8190	E		Gc stocking waistlngth 18-30					
L8195	E		Gc stocking waistlngth 30-40					
L8200	E		Gc stocking waistlngth 40-50					
L8210	E		Gc stocking custom made					
L8220	E		Gc stocking lymphedema					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L8230	E		Gc stocking garter belt					
L8239	E		G compression stocking NOS					
L8300	A		Truss single w/ standard pad					
L8310	A		Truss double w/ standard pad					
L8320	A		Truss addition to std pad wa					
L8330	A		Truss add to std pad scrotal					
L8400	A		Sheath below knee					
L8410	A		Sheath above knee					
L8415	A		Sheath upper limb					
L8417	A		Pros sheath/sock w gel cushn					
L8420	A		Prosthetic sock multi ply BK					
L8430	A		Prosthetic sock multi ply AK					
L8435	A		Pros sock multi ply upper lm					
L8440	A		Shrinker below knee					
L8460	A		Shrinker above knee					
L8465	A		Shrinker upper limb					
L8470	A		Pros sock single ply BK					
L8480	A		Pros sock single ply AK					
L8485	A		Pros sock single ply upper l					
L8499	A		Unlisted misc prosthetic ser					
L8500	A		Artificial larynx					
L8501	A		Tracheostomy speaking valve					
L8505	A		Artificial larynx, accessory					
L8507	A		Trach-esoph voice pros pt in					
L8509	A		Trach-esoph voice pros md in					
L8510	A		Voice amplifier					
L8511	A		Indwelling trach insert					
L8512	A		Gel cap for trach voice pros					
L8513	A		Trach pros cleaning device					
L8514	A		Repl trach puncture dilator					
L8515	A		Gel cap app device for trach					
L8600	N		Implant breast silicone/eq					
L8603	N		Collagen imp urinary 2.5 ml					
L8606	N		Synthetic implnt urinary 1ml					
L8610	N		Ocular implant					
L8612	N		Aqueous shunt prosthesis					
L8613	N		Ossicular implant					
L8614	N		Cochlear device/system					
L8615	A		Coch implant headset replace					
L8616	A		Coch implant microphone repl					
L8617	A		Coch implant trans coil repl					
L8618	A		Coch implant tran cable repl					
L8619	A		Replace cochlear processor					
L8620	A		Repl lithium ion battery					
L8621	A		Repl zinc air battery					
L8622	A		Repl alkaline battery					
L8630	N		Metacarpophalangeal implant					
L8631	N		MCP joint repl 2 pc or more					
L8641	N		Metatarsal joint implant					
L8642	N		Hallux implant					
L8658	N		Interphalangeal joint spacer					
L8659	N		Interphalangeal joint repl					
L8670	N		Vascular graft, synthetic					
L8699	N		Prosthetic implant NOS					
L9900	A		O&P supply/accessory/service					
M0064	X		Visit for drug monitoring	0374	1.0414	$61.80		$12.36
M0075	E		Cellular therapy					
M0076	E		Prolotherapy					
M0100	E		Intragastric hypothermia					
M0300	E		IV chelationtherapy					
M0301	E		Fabric wrapping of aneurysm					
P2028	A		Cephalin floculation test					
P2029	A		Congo red blood test					
P2031	E		Hair analysis					
P2033	A		Blood thymol turbidity					
P2038	A		Blood mucoprotein					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
P3000	A		Screen pap by tech w md supv					
P3001	B		Screening pap smear by phys					
P7001	E		Culture bacterial urine					
P9010	K		Whole blood for transfusion	0950	2.0123	$119.42		$23.88
P9011	K		Blood split unit	0967	1.2698	$75.35		$15.07
P9012	K		Cryoprecipitate each unit	0952	0.7395	$43.88		$8.78
P9016	K		RBC leukocytes reduced	0954	2.7370	$162.42		$32.48
P9017	K		Plasma 1 donor frz w/in 8 hr	9508	1.2038	$71.44		$14.29
P9019	K		Platelets, each unit	0957	0.8317	$49.36		$9.87
P9020	K		Plaelet rich plasma unit	0958	5.1815	$307.49		$61.50
P9021	K		Red blood cells unit	0959	2.0301	$120.47		$24.09
P9022	K		Washed red blood cells unit	0960	2.9707	$176.29		$35.26
P9023	K		Frozen plasma, pooled, sd	0949	1.1956	$70.95		$14.19
P9031	K		Platelets leukocytes reduced	1013	1.6023	$95.09		$19.02
P9032	K		Platelets, irradiated	9500	1.3589	$80.64		$16.13
P9033	K		Platelets leukoreduced irrad	0968	2.3639	$140.28		$28.06
P9034	K		Platelets, pheresis	9507	6.8988	$409.40		$81.88
P9035	K		Platelet pheres leukoreduced	9501	8.1495	$483.62		$96.72
P9036	K		Platelet pheresis irradiated	9502	5.1895	$307.96		$61.59
P9037	K		Plate pheres leukoredu irrad	1019	9.5131	$564.54		$112.91
P9038	K		RBC irradiated	9505	2.3876	$141.69		$28.34
P9039	K		RBC deglycerolized	9504	6.4314	$381.66		$76.33
P9040	K		RBC leukoreduced irradiated	0969	3.6451	$216.31		$43.26
P9041	K		Albumin (human),5%, 50ml	0961	0.5119	$30.38		$6.08
P9043	K		Plasma protein fract,5%,50ml	0956	1.1226	$66.62		$13.32
P9044	K		Cryoprecipitatereducedplasma	1009	1.3062	$77.51		$15.50
P9045	K		Albumin (human), 5%, 250 ml	0963	1.3869	$82.30		$16.46
P9046	K		Albumin (human), 25%, 20 ml	0964	0.4878	$28.95		$5.79
P9047	K		Albumin (human), 25%, 50ml	0965	1.1117	$65.97		$13.19
P9048	K		Plasmaprotein fract,5%,250ml	0966	4.9564	$294.13		$58.83
P9050	K		Granulocytes, pheresis unit	9506	15.6155	$926.67		$185.33
P9051	K		Blood, l/r, cmv-neg	1010	2.9692	$176.20		$35.24
P9052	K		Platelets, hla-m, l/r, unit	1011	10.9690	$650.93		$130.19
P9053	K		Plt, pher, l/r cmv-neg, irr	1020	10.1551	$602.63		$120.53
P9054	K		Blood, l/r, froz/degly/wash	1016	5.2631	$312.33		$62.47
P9055	K		Plt, aph/pher, l/r, cmv-neg	1017	8.5998	$510.34		$102.07
P9056	K		Blood, l/r, irradiated	1018	2.8004	$166.18		$33.24
P9057	K		RBC, frz/deg/wsh, l/r, irrad	1021	4.8787	$289.52		$57.90
P9058	K		RBC, l/r, cmv-neg, irrad	1022	4.2901	$254.59		$50.92
P9059	K		Plasma, frz between 8-24hour	0955	1.2934	$76.75		$15.35
P9060	K		Fr frz plasma donor retested	9503	1.6241	$96.38		$19.28
P9603	A		One-way allow prorated miles					
P9604	A		One-way allow prorated trip					
P9612	N		Catheterize for urine spec					
P9615	N		Urine specimen collect mult					
Q0035	X		Cardiokymography	0100	2.4968	$148.17	$41.44	$29.63
Q0081	B		Infusion ther other than che					
Q0083	B		Chemo by other than infusion					
Q0084	B		Chemotherapy by infusion					
Q0085	B		Chemo by both infusion and o					
Q0091	T		Obtaining screen pap smear	0191	0.167	$9.91	$2.78	$1.98
Q0092	N		Set up port xray equipment					
Q0111	A		Wet mounts/ w preparations					
Q0112	A		Potassium hydroxide preps					
Q0113	A		Pinworm examinations					
Q0114	A		Fern test					
Q0115	A		Post-coital mucous exam					
Q0136	K		Non esrd epoetin alpha inj	0733		$9.99		$2.00
Q0137	K		Darbepoetin alfa, non esrd	0734		$3.28		$0.66
Q0144	E		Azithromycin dihydrate, oral					
Q0163	N		Diphenhydramine HCl 50mg					
Q0164	N		Prochlorperazine maleate 5mg					
Q0165	B		Prochlorperazine maleate10mg					
Q0166	K		Granisetron HCl 1 mg oral	0765		$33.51		$6.70
Q0167	N		Dronabinol 2.5mg oral					
Q0168	B		Dronabinol 5mg oral					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q0169	N		Promethazine HCl 12.5mg oral					
Q0170	B		Promethazine HCl 25 mg oral					
Q0171	Na		Chlorpromazine HCl 10mg oral					
Q0172	B		Chlorpromazine HCl 25mg oral					
Q0173	N		Trimethobenzamide HCl 250mg					
Q0174	N		Thiethylperazine maleate10mg					
Q0175	N		Perphenazine 4mg oral					
Q0176	B		Perphenazine 8mg oral					
Q0177	N		Hydroxyzine pamoate 25mg					
Q0178	B		Hydroxyzine pamoate 50mg					
Q0179	K		Ondansetron HCl 8mg oral	0769		$32.02		$6.40
Q0180	K		Dolasetron mesylate oral	0763		$48.54		$9.71
Q0181	E		Unspecified oral anti-emetic					
Q0187	K		Factor viia recombinant	1409		$1,080.11		$216.02
Q1001	N		Ntiol category 1					
Q1002	N		Ntiol category 2					
Q1003	N		Ntiol category 3					
Q1004	N		Ntiol category 4					
Q1005	N		Ntiol category 5					
Q2001	E		Oral cabergoline 0.5 mg					
Q2002	N		Elliotts b solution per ml					
Q2003	K		Aprotinin, 10,000 kiu	7019		$2.20		$0.44
Q2004	N		Bladder calculi irrig sol					
Q2005	K		Corticorelin ovine triflutat	7024		$386.53		$77.31
Q2006	K		Digoxin immune fab (ovine)	7025		$552.18		$110.44
Q2007	K		Ethanolamine oleate 100 mg	7026		$64.53		$12.91
Q2008	K		Fomepizole, 15 mg	7027		$12.31		$2.46
Q2009	K		Fosphenytoin, 50 mg	7028		$5.19		$1.04
Q2011	K		Hemin, per 1 mg	7030		$6.51		$1.30
Q2012	K		Pegademase bovine, 25 iu	9168		$161.16		$32.23
Q2013	K		Pentastarch 10% solution	7040		$12.45		$2.49
Q2014	N		Sermorelin acetate, 0.5 mg					
Q2017	K		Teniposide, 50 mg	7035		$266.23		$53.25
Q2018	K		Urofollitropin, 75 iu	7037		$44.74		$8.95
Q2019	K		Basiliximab	1615		$1,473.57		$294.71
Q2020	E		Histrelin acetate					
Q2021	K		Lepirudin	9057		$128.17		$25.63
Q2022	K		VonWillebrandFactrCmplxperIU	1618		$0.74		$0.15
Q3000	H		Rubidium-Rb-82	9025				
Q3001	B		Brachytherapy Radioelements					
Q3002	H		Gallium ga 67	1619				
Q3003	H		Technetium tc99m bicisate	1620				
Q3004	N		Xenon xe 133					
Q3005	H		Technetium tc99m mertiatide	1622				
Q3006	H		Technetium tc99m glucepatate	9154				
Q3007	H		Sodium phosphate p32	1624				
Q3008	H		Indium 111-in pentetreotide	1625				
Q3009	N		Technetium tc99m oxidronate					
Q3010	H		Technetium tc99m labeledrbcs	9155				
Q3011	H		Chromic phosphate p32	1628				
Q3012	N		Cyanocobalamin cobalt co57					
Q3014	A		Telehealth facility fee					
Q3019	A		ALS emer trans no ALS serv					
Q3020	A		ALS nonemer trans no ALS se					
Q3025	K		IM inj interferon beta 1-a	9022		$89.10		$17.82
Q3026	E		Subc inj interferon beta-1a					
Q3031	N		Collagen skin test					
Q4001	B		Cast sup body cast plaster					
Q4002	B		Cast sup body cast fiberglas					
Q4003	B		Cast sup shoulder cast plstr					
Q4004	B		Cast sup shoulder cast fbrgl					
Q4005	B		Cast sup long arm adult plst					
Q4006	B		Cast sup long arm adult fbrg					
Q4007	B		Cast sup long arm ped plster					
Q4008	B		Cast sup long arm ped fbrgls					
Q4009	B		Cast sup sht arm adult plstr					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q4010	B		Cast sup sht arm adult fbrgl					
Q4011	B		Cast sup sht arm ped plaster					
012	B		Cast sup sht arm ped fbrglas					
Q4013	B		Cast sup gauntlet plaster					
Q4014	B		Cast sup gauntlet fiberglass					
Q4015	B		Cast sup gauntlet ped plster					
Q4016	B		Cast sup gauntlet ped fbrgls					
Q4017	B		Cast sup lng arm splint plst					
Q4018	B		Cast sup lng arm splint fbrg					
Q4019	B		Cast sup lng arm splnt ped p					
Q4020	B		Cast sup lng arm splnt ped f					
Q4021	B		Cast sup sht arm splint plst					
Q4022	B		Cast sup sht arm splint fbrg					
Q4023	B		Cast sup sht arm splnt ped p					
Q4024	B		Cast sup sht arm splnt ped f					
Q4025	B		Cast sup hip spica plaster					
Q4026	B		Cast sup hip spica fiberglas					
Q4027	B		Cast sup hip spica ped plstr					
Q4028	B		Cast sup hip spica ped fbrgl					
Q4029	B		Cast sup long leg plaster					
Q4030	B		Cast sup long leg fiberglass					
Q4031	B		Cast sup lng leg ped plaster					
Q4032	B		Cast sup lng leg ped fbrgls					
Q4033	B		Cast sup lng leg cylinder pl					
Q4034	B		Cast sup lng leg cylinder fb					
Q4035	B		Cast sup lngleg cylndr ped p					
Q4036	B		Cast sup lngleg cylndr ped f					
Q4037	B		Cast sup shrt leg plaster					
Q4038	B		Cast sup shrt leg fiberglass					
Q4039	B		Cast sup shrt leg ped plster					
Q4040	B		Cast sup shrt leg ped fbrgls					
Q4041	B		Cast sup lng leg splnt plstr					
Q4042	B		Cast sup lng leg splnt fbrgl					
Q4043	B		Cast sup lng leg splnt ped p					
Q4044	B		Cast sup lng leg splnt ped f					
Q4045	B		Cast sup sht leg splnt plstr					
Q4046	B		Cast sup sht leg splnt fbrgl					
Q4047	B		Cast sup sht leg splnt ped p					
Q4048	B		Cast sup sht leg splnt ped f					
Q4049	B		Finger splint, static					
Q4050	B		Cast supplies unlisted					
Q4051	B		Splint supplies misc					
Q4054	A		Darbepoetin alfa, esrd use					
Q4055	A		Epoetin alfa, esrd use					
Q4075	N		Acyclovir, 5 mg					
Q4076	N		Dopamine hcl, 40 mg					
Q4077	K		Treprostinil, 1 mg	1082		$55.02		$11.00
Q4079	G		Injection, natalizumab	9126		$6.51		$1.30
Q9941	K		IVIG lyophil 1g	0869		$39.46		$7.89
Q9942	K		IVIG lyophil 10 mg	0870		$0.40		$0.08
Q9943	K		IVIG non-lyophil 1g	0871		$57.26		$11.45
Q9944	K		IVIG non-lyophil 10 mg	0872		$0.57		$0.11
Q9945	K		LOCM <=149 mg/ml iodine, 1ml	9157		$0.51		$0.10
Q9946	K		LOCM 150-199mg/ml iodine,1ml	9158		$2.00		$0.40
Q9947	K		LOCM 200-249mg/ml iodine,1ml	9159		$0.78		$0.16
Q9948	K		LOCM 250-299mg/ml iodine,1ml	9160		$0.66		$0.13
Q9949	K		LOCM 300-349mg/ml iodine,1ml	9161		$0.41		$0.08
Q9950	K		LOCM 350-399mg/ml iodine,1ml	9162		$0.27		$0.05
Q9951	K		LOCM >= 400 mg/ml iodine,1ml	19163		$0.20		$0.04
Q9952	K		Inj Gad-base MR contrast, ml	9164		$3.01		$0.60
Q9953	N		Inj Fe-based MR contrast, ml					
Q9954	K		Oral MR contrast, 100 ml	9165		$9.01		$1.80
Q9955	K		Inj perflexane lip micros, m	9203		$13.49		$2.70
Q9956	K		Inj octafluoropropane mic,ml	9202		$41.42		$8.28
Q9957	K		Inj perflutren lip micros, m	9112		$63.51		$12.70
R0070	N		Transport portable x-ray					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
R0075	N		Transport port x-ray multipl					
R0076	N		Transport portable EKG					
V2020	A		Vision svcs frames purchases					
V2025	E		Eyeglasses delux frames					
V2100	A		Lens spher single plano 4.00					
V2101	A		Single visn sphere 4.12-7.00					
V2102	A		Singl visn sphere 7.12-20.00					
V2103	A		Spherocylindr 4.00d/12-2.00d					
V2104	A		Spherocylindr 4.00d/2.12-4d					
V2105	A		Spherocylinder 4.00d/4.25-6d					
V2106	A		Spherocylinder 4.00d/>6.00d					
V2107	A		Spherocylinder 4.25d/12-2d					
V2108	A		Spherocylinder 4.25d/2.12-4d					
V2109	A		Spherocylinder 4.25d/4.25-6d					
V2110	A		Spherocylinder 4.25d/over 6d					
V2111	A		Spherocylindr 7.25d/.25-2.25					
V2112	A		Spherocylindr 7.25d/2.25-4d					
V2113	A		Spherocylindr 7.25d/4.25-6d					
V2114	A		Spherocylinder over 12.00d					
V2115	A		Lens lenticular bifocal					
V2118	A		Lens aniseikonic single					
V2121	A		Lenticular lens, single					
V2199	A		Lens single vision not oth c					
V2200	A		Lens spher bifoc plano 4.00d					
V2201	A		Lens sphere bifocal 4.12-7.0					
V2202	A		Lens sphere bifocal 7.12-20					
V2203	A		Lens sphcyl bifocal 4.00d/.1					
V2204	A		Lens sphcy bifocal 4.00d/2.1					
V2205	A		Lens sphcy bifocal 4.00d/4.2					
V2206	A		Lens sphcy bifocal 4.00d/ove					
V2207	A		Lens sphcy bifocal 4.25-7d/					
V2208	A		Lens sphcy bifocal 4.25-7/2					
V2209	A		Lens sphcy bifocal 4.25-7/4					
V2210	A		Lens sphcy bifocal 4.25-7/ov					
V2211	A		Lens sphcy bifo 7.25-12/.25-					
V2212	A		Lens sphcyl bifo 7.25-12/2.2					
V2213	A		Lens sphcyl bifo 7.25-12/4.2					
V2214	A		Lens sphcyl bifocal over 12					
V2215	A		Lens lenticular bifocal					
V2218	A		Lens aniseikonic bifocal					
V2219	A		Lens bifocal seg width over					
V2220	A		Lens bifocal add over 3.25d					
V2221	A		Lenticular lens, bifocal					
V2299	A		Lens bifocal speciality					
V2300	A		Lens sphere trifocal 4.00d					
V2301	A		Lens sphere trifocal 4.12-7					
V2302	A		Lens sphere trifocal 7.12-20					
V2303	A		Lens sphcy trifocal 4.0/.12-					
V2304	A		Lens sphcy trifocal 4.0/2.25					
V2305	A		Lens sphcy trifocal 4.0/4.25					
V2306	A		Lens sphcyl trifocal 4.00/>6					
V2307	A		Lens sphcy trifocal 4.25-7/					
V2308	A		Lens sphc trifocal 4.25-7/2					
V2309	A		Lens sphc trifocal 4.25-7/4					
V2310	A		Lens sphc trifocal 4.25-7/>6					
V2311	A		Lens sphc trifo 7.25-12/.25-					
V2312	A		Lens sphc trifo 7.25-12/2.25					
V2313	A		Lens sphc trifo 7.25-12/4.25					
V2314	A		Lens sphcyl trifocal over 12					
V2315	A		Lens lenticular trifocal					
V2318	A		Lens aniseikonic trifocal					
V2319	A		Lens trifocal seg width > 28					
V2320	A		Lens trifocal add over 3.25d					
V2321	A		Lenticular lens, trifocal					
V2399	A		Lens trifocal speciality					
V2410	A		Lens variab asphericity sing					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V2430	A		Lens variable asphericity bi					
V2499	A		Variable asphericity lens					
V2500	A		Contact lens pmma spherical					
V2501	A		Cntct lens pmma-toric/prism					
V2502	A		Contact lens pmma bifocal					
V2503	A		Cntct lens pmma color vision					
V2510	A		Cntct gas permeable sphericl					
V2511	A		Cntct toric prism ballast					
V2512	A		Cntct lens gas permbl bifocl					
V2513	A		Contact lens extended wear					
V2520	A		Contact lens hydrophilic					
V2521	A		Cntct lens hydrophilic toric					
V2522	A		Cntct lens hydrophil bifocl					
V2523	A		Cntct lens hydrophil extend					
V2530	A		Contact lens gas impermeable					
V2531	A		Contact lens gas permeable					
V2599	A		Contact lens/es other type					
V2600	A		Hand held low vision aids					
V2610	A		Single lens spectacle mount					
V2615	A		Telescop/othr compound lens					
V2623	A		Plastic eye prosth custom					
V2624	A		Polishing artifical eye					
V2625	A		Enlargemnt of eye prosthesis					
V2626	A		Reduction of eye prosthesis					
V2627	A		Scleral cover shell					
V2628	A		Fabrication & fitting					
V2629	A		Prosthetic eye other type					
V2630	N		Anter chamber intraocul lens					
V2631	N		Iris support intraoclr lens					
V2632	N		Post chmbr intraocular lens					
V2700	A		Balance lens					
V2702	E		Deluxe lens feature					
V2710	A		Glass/plastic slab off prism					
V2715	A		Prism lens/es					
V2718	A		Fresnell prism press-on lens					
V2730	A		Special base curve					
V2744	A		Tint photochromatic lens/es					
V2745	A		Tint, any color/solid/grad					
V2750	A		Anti-reflective coating					
V2755	A		UV lens/es					
V2756	E		Eye glass case					
V2760	A		Scratch resistant coating					
V2761	B		Mirror coating					
V2762	A		Polarization, any lens					
V2770	A		Occluder lens/es					
V2780	A		Oversize lens/es					
V2781	B		Progressive lens per lens					
V2782	A		Lens, 1.54-1.65 p/1.60-1.79g					
V2783	A		Lens, >= 1.66 p/>=1.80 g					
V2784	A		Lens polycarb or equal					
V2785	F		Corneal tissue processing					
V2786	A		Occupational multifocal lens					
V2790	N		Amniotic membrane					
V2797	A		Vis item/svc in other code					
V2799	A		Miscellaneous vision service					
V5008	E		Hearing screening					
V5010	E		Assessment for hearing aid					
V5011	E		Hearing aid fitting/checking					
V5014	E		Hearing aid repair/modifying					
V5020	E		Conformity evaluation					
V5030	E		Body-worn hearing aid air					
V5040	E		Body-worn hearing aid bone					
V5050	E		Hearing aid monaural in ear					
V5060	E		Behind ear hearing aid					
V5070	E		Glasses air conduction					
V5080	E		Glasses bone conduction					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION CALENDAR YEAR 2006—Continued

CPT/ HCPCS	SI	CI	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V5090	E		Hearing aid dispensing fee					
V5095	E		Implant mid ear hearing pros					
V5100	E		Body-worn bilat hearing aid					
V5110	E		Hearing aid dispensing fee					
V5120	E		Body-worn binaur hearing aid					
V5130	E		In ear binaural hearing aid					
V5140	E		Behind ear binaur hearing ai					
V5150	E		Glasses binaural hearing aid					
V5160	E		Dispensing fee binaural					
V5170	E		Within ear cros hearing aid					
V5180	E		Behind ear cros hearing aid					
V5190	E		Glasses cros hearing aid					
V5200	E		Cros hearing aid dispens fee					
V5210	E		In ear bicros hearing aid					
V5220	E		Behind ear bicros hearing ai					
V5230	E		Glasses bicros hearing aid					
V5240	E		Dispensing fee bicros					
V5241	E		Dispensing fee, monaural					
V5242	E		Hearing aid, monaural, cic					
V5243	E		Hearing aid, monaural, itc					
V5244	E		Hearing aid, prog, mon, cic					
V5245	E		Hearing aid, prog, mon, itc					
V5246	E		Hearing aid, prog, mon, ite					
V5247	E		Hearing aid, prog, mon, bte					
V5248	E		Hearing aid, binaural, cic					
V5249	E		Hearing aid, binaural, itc					
V5250	E		Hearing aid, prog, bin, cic					
V5251	E		Hearing aid, prog, bin, itc					
V5252	E		Hearing aid, prog, bin, ite					
V5253	E		Hearing aid, prog, bin, bte					
V5254	E		Hearing id, digit, mon, cic					
V5255	E		Hearing aid, digit, mon, itc					
V5256	E		Hearing aid, digit, mon, ite					
V5257	E		Hearing aid, digit, mon, bte					
V5258	E		Hearing aid, digit, bin, cic					
V5259	E		Hearing aid, digit, bin, itc					
V5260	E		Hearing aid, digit, bin, ite					
V5261	E		Hearing aid, digit, bin, bte					
V5262	E		Hearing aid, disp, monaural					
V5263	E		Hearing aid, disp, binaural					
V5264	E		Ear mold/insert					
V5265	E		Ear mold/insert, disp					
V5266	E		Battery for hearing device					
V5267	E		Hearing aid supply/accessory					
V5268	E		ALD Telephone Amplifier					
V5269	E		Alerting device, any type					
V5270	E		ALD, TV amplifier, any type					
V5271	E		ALD, TV caption decoder					
V5272	E		Tdd					
V5273	E		ALD for cochlear implant					
V5274	E		ALD unspecified					
V5275	E		Ear impression					
V5298	E		Hearing aid noc					
V5299	B		Hearing service					
V5336	E		Repair communication device					
V5362	E		Speech screening					
V5363	E		Language screening					
V5364	E		Dysphagia screening					

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare__Hospital Insurance; and Program No. 93.774, Medicare__Supplementary Medical Insurance Program)

Dated: August 17, 2005

Ann C. Agnew,

Executive Secretary to the Department

[FR Doc. 05–16699 Filed 8–18–05; 2:44 pm]

BILLING CODE 4120–01–P

Federal Register

Friday,
August 26, 2005

Part IV

Department of Labor

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 1 and 4

Service Contract Act Wage Determination OnLine Request Process; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Parts 1 and 4

[RIN 1215–AB47]

Service Contract Act Wage Determination OnLine Request Process

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is amending two regulations to allow for full implementation of the Wage Determinations OnLine (WDOL) Internet Web site (*http://www.wdol.gov*) as the source for federal contracting agencies to use when obtaining wage determinations issued by the DOL for service contracts subject to the McNamara-O'Hara Service Contract Act (SCA) and for construction contracts subject to the Davis-Bacon Act and Related Acts (DBRA).

DATES: These rules are effective on September 26, 2005.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–0062. This is not a toll-free number.

You may direct questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the WHD toll-free help line at 1–866–4US-WAGE (1–866–487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the agency Web site for a nationwide listing of WHD District and Area Offices at: *http://www.dol.gov/esa/contacts/whd/america2.htm.*

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation is not subject to the Paperwork Reduction Act, because it contains no new information collection requirements and does not modify any existing requirements.

II. Section 508 of the Rehabilitation Act

The Wage Determinations OnLine (WDOL) Internet Web site (*http://www.wdol.gov*), an electronic information resource, is subject to and will be developed and maintained in accordance with the accessibility requirements of Section 508 of the Rehabilitation Act, 29 U.S.C. 794d.

III. Summary of Changes

The SCA requires contractors and subcontractors performing services on prime contracts in excess of $2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality as determined by the Secretary of Labor (or authorized representative), or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.

SCA section 4, 41 U.S.C. 353, authorizes the Secretary of Labor to enforce the Act, make rules and regulations, issue orders, hold hearings, make decisions based upon findings of fact and take other appropriate action. The DOL rules relating to SCA administration are contained in Regulations, 29 CFR part 4.

Section 1 of the Davis-Bacon Act (DBA), as amended, 40 U.S.C. 3141 *et seq.*, requires that each contract over $2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. The DBA requires contractors or their subcontractors to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character as determined by the Secretary of Labor.

Regulations, 29 CFR part 1, contain the procedures for making and applying determinations of prevailing wage rates and fringe benefits pursuant to the DBA and any other Federal statute providing for determinations of such wages (the Davis-Bacon Related Acts) by the DOL in accordance with the provisions of the DBA.

The DOL published a Notice of Proposed Rulemaking in the **Federal Register** on December 16, 2004 (69 FR 75408), proposing to update its regulations to have contracting agencies use the WDOL Internet website to meet their obligation to obtain DBA general wage determinations from the Wage and Hour Division (WHD). The DOL proposed to publish wage determinations solely through WDOL and to discontinue publishing notice of changes in the **Federal Register** and to no longer publish paper copies of general wage determinations through the Government Printing Office (GPO). WDOL offers users the opportunity to request e-mail notice of future revisions to a wage determination they have selected for a specific period of time, or until a specific date.

For SCA wage determinations, the DOL proposed to eliminate the paper Form SF–98 and replace it with an electronic e98 process by which contracting agencies may continue to request SCA wage determinations from the WHD. The DOL also proposed to allow use of WDOL as an alternative means of obtaining SCA wage determinations. The DOL further proposed to update pertinent statutory citations for applicable laws to reflect amendments to Title 40 of the U.S. Code and to make other minor editorial revisions and updates to its regulations.

The development of WDOL required an update of the existing regulations, which now also provides a basis for updating related information in the Federal Acquisition Regulations (FAR) to be compatible with the DOL rule. WDOL does not affect how the WHD determines prevailing wages under either the SCA or DBA.

29 CFR Part 1

The proposed rule adopted the WDOL website as the single source for obtaining DBA general wage determinations and eliminated publication of notices in the **Federal Register**. Notice of future modifications and supersedeas general wage determinations will be posted on WDOL. The proposed rule also eliminated references to GPO publication of general wage determinations, although GPO may continue, at its discretion, to publish general wage determinations. The proposed rule retained the requirement in the current regulations under 29 CFR 1.5 that Federal contracting agencies request a wage determination by preparing and mailing Form SF–308 to the Department of Labor, for those infrequent situations when a DBA general wage determination is not available through WDOL. The DOL processed fewer than 100 Forms SF–308 in FY 2004, and did not believe providing Federal agencies with an electronic submission option in these rare cases justified the considerable expense that developing such a system would require.

29 CFR Part 4

The proposal drew upon technological advances of recent years and the wide use of electronic communication and information sharing. It replaced the paper Standard

Form SF–98 request and response process for obtaining SCA wage determinations with an electronic e98 process and enabled contracting agencies alternatively to use the WDOL website to obtain SCA wage determinations.

The DOL has been working with contracting agencies to develop better and more efficient mechanisms for agencies to obtain SCA wage determinations. With the advent and expansion of the Internet in the mid-1990s, several contracting agencies approached the WHD seeking the ability to access and download SCA wage determinations. The vast majority of the covered service contracts awarded by these agencies were either options or renewals, and the applicable SCA wage determinations for these contracts were well established. By this time, the WHD had developed a standard set of SCA wage determinations that applied to most of these contracts. The National Technical Information Service (NTIS) had posted these wage determinations on the Internet for information purposes, and the agencies requested the ability to download and use these standard wage determinations in appropriate situations. This led to the WHD entering into Memoranda of Understanding (MOUs) with several agencies to allow them to use these standard wage determinations without first submitting an SF–98. Under the MOUs, the agencies agreed to train their personnel in the proper selection and use of SCA wage determinations. The agencies also agreed to monitor the SCA wage determinations database and to use any subsequent revisions of the applicable wage determinations that were issued before the applicable procurement dates specified in the SCA regulations. After the agency selected an applicable SCA wage determination, it would notify the WHD of its selection by the submission of a Form SF–98 after the fact.

This MOU program further implemented the remedial purpose of the SCA by requiring that participating agencies monitor the SCA wage determination database and use the latest revisions published in a timely manner before award or commencement of the contract. With the paper Form SF–98, the WHD had no mechanism to follow-up and advise contracting agencies when wage determinations were revised or updated. Because the MOU program proved to be quite successful, it subsequently was expanded to numerous other agencies.

An interagency work group composed of representatives from the Office of Management and Budget, Department of the Army, Department of the Air Force, Department of the Navy, Army Corps of Engineers, General Services Administration, NTIS and the Department of Energy began development of a new online system designed to consolidate the best practices of agencies operating under the MOU program. The work group also looked at adding non-standard wage determinations to the online system. Principal objectives of the work group were the elimination of the paper Form SF–98 and the availability of wage determinations electronically.

At the same time, the WHD was developing an electronic request and response system to replace Form SF–98. The WHD began live tests of the e98 system in FY 2003. During FY 2003, the WHD received and responded to more than 12,000 e98 submissions. A computer responds to a significant number of the e98 requests immediately while the requester is online. The remaining requests are referred to an analyst and the response is usually sent later the same day or the next day. For all requests, the e98 system is designed to track individual requests by the procurement dates listed on the request, and when a wage determination that would affect a particular procurement is revised, an amended email response is sent to the contracting agency.

The site developed by the WDOL work group integrates the e98 process with the best practices developed under the MOU program. WDOL offers users a number of unique features in a web-based environment. The site includes: (1) guidance to contracting officers on selecting the appropriate wage determination for each contract action; (2) access to the most current SCA and DBA wage determinations, as well as an alert service for notification of future revisions to particular wage determinations; and, (3) access to databases containing archived wage determinations under both the SCA and DBA.

To facilitate contracting officers selecting the appropriate SCA wage determination, the WDOL site leads the requester through a ''decision tree'' consisting of a series of questions. Based upon the responses to these questions, the WDOL site will either identify an SCA wage determination or direct the requester to submit an e98. A link to the e98 site is provided. In addition, the WDOL site gives the requester the option of going directly to the e98 site without having to go through the ''decision tree'' selection process. If a contracting officer has any question regarding the selection of the proper SCA wage determination, the WDOL site directs the contracting officer to the e98.

As clearly indicated on the WDOL Web site, compliance with the decision tree selection process and the guidance provided by the User's Guide does not relieve the contracting officer or other program user of the requirement to carefully review the contract or solicitation, the FAR and its Supplements, other Federal agency acquisition regulations or the DOL regulations related to these actions. If the DOL discovers and determines, whether before or after contract award, that the correct SCA wage determination was not included in a covered contract, the contracting officer, within 30 days of notification by the DOL, is required to include in the contract the applicable wage determination issued by the DOL. (See 29 CFR 4.5(c)(2).)

III. Summary of Comments

DOL received five comments in response to the Notice of Proposed Rulemaking, discussed further below, from the: Office of the Under Secretary of Defense (DOD); Army Corps of Engineers (Army); Department of the Navy, Office of the Assistant Secretary for Research, Development and Acquisition (Navy); Contract Services Association (CSA); and International Association of Machinists and Aerospace Workers. All comments generally support the automated environment for obtaining wage determinations that underlies the proposed rule; however, several comments recommend minor revisions. Some of the recommendations address issues that are beyond the scope of the proposed rule.

The CSA urges removing the references in proposed §§ 1.2(e) and 4.1a(i) that ''the term WDOL will apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes,'' in addition to *http://www.wdol.gov.* The CSA believes the definition may cause potential confusion among contractors and contracting agencies. These sections define the term, ''WDOL.'' The proposed rule allows more flexibility and accommodates future technological advances without the delays that might otherwise be associated with procedural regulatory changes. The final rule retains the references.

The Navy urges revising or eliminating the current requirement in § 1.4 for contracting agencies to provide the DOL with an annual summary of their construction plans for the coming year. The final rule retains the requirement. The Navy believes much of the information provided in these

reports could be extracted from various reports used for other purposes. These construction reports are not related to the process for obtaining wage determinations and are not part of the proposed rule. In the past, the WHD has used these reports to identify localities with the greatest need for new Davis-Bacon wage surveys. Although the WHD is testing new processes that might allow regularly scheduled Davis-Bacon wage surveys of all areas of the country, it is not yet clear that such processes will totally eliminate the need for some targeted surveys. In addition, it is not clear that the other sources identified by the Navy would provide the same level of detail and information as called for under § 1.4 of the Regulations. The DOL does not believe that further action on this recommendation is warranted at this time and that the suggestion would necessitate reopening the notice and comment process. The DOL will give careful consideration to the Navy's recommendation, if it undertakes further rulemaking regarding the Davis-Bacon Act in the future.

The DOD and Navy recommend replacing the detailed discussion in § 1.5(b) regarding the requirements for completing Form SF–308 with a more general statement and provide for an electronic submission option. The final rule retains the existing provision, because the DOL does not believe providing Federal agencies with an electronic submission option for the rare instances in which an agency files Form SF–308 justifies the considerable expense that developing such a system would require. The DOL processed fewer than 100 Forms SF–308 in FY 2004.

The CSA recommends amending the definition of ''wage determination'' in § 4.1a(h) to clarify the effective date and applicability of wage determinations. This definition is not part of the proposed regulatory changes. The Administrative Procedure Act (APA), 5 U.S.C. 553, normally requires notice and an opportunity for public comment when an agency amends a substantive rule. The APA, however, contains exceptions to the notice and comment provisions for (1) ''interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice'' and (2) rules where the agency for good cause finds that notice and public comment are ''impracticable, unnecessary, or contrary to the public interest.'' Agencies may immediately adopt rules subject to the exceptions. The suggested change regarding the date on which a wage determination becomes effective, without including a reference to the applicability of the determination, helps to clarify the WDOL process and augments § 4.4(c)(1) of the proposed rule. The section makes clear that a contracting agency using the WDOL process bears full responsibility for selecting the correct wage determination. The rule, however, also requires the contracting agency to amend a contract if the DOL subsequently determines the contracting agency applied an incorrect wage determination to a specific contract; thus, an inapplicable wage determination does not become applicable because the contracting agency has inserted it into the contracting action. The final rule incorporates the suggestion to include when a wage determination becomes effective by adding a new sentence to the existing definition for wage determination in § 4.1a(h) to read, ''A wage determination is effective upon its publication on the WDOL website or when a Federal agency receives a response from the Department of Labor to an e98.'' The DOL hereby finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public comment procedures on this clarification of the definition of ''wage determination'' in § 4.1a(h) are impracticable and unnecessary and would not further the public interest.

The DOD and Navy want the definition for the term, ''e98,'' in § 4.1a(j) to include the Internet address for WDOL. The agencies believe such a change would help clarify how to locate the e98. The DOL agrees this could improve access to the e98. The final rule includes the Web site.

The CSA believes proposed § 4.3(c) requires minor clarification by adding the word, ''revision,'' to the discussion of methods by which an existing wage determination may become obsolete in the last sentence. The CSA points out that the remainder of the section discusses ''revisions'' of wage determinations. The DOL agrees the change may help in understanding the requirement, and the final rule incorporates this change. The CSA also recommends relocating the proposed description in § 4.3(c) of what a wage determination includes and its significance to the definitions found in § 4.1a. The final rule retains the description in its present location, because the DOL believes the overall discussion of wage determinations in § 4.3 remains a more appropriate context for information found in a wage determination and its significance.

The CSA also urges revising proposed § 4.3(e) to (1) make all effective SCA wage determinations and any underlying collective bargaining agreements and locality wage determinations available for public inspection at all WHD District Offices and (2) clarify the availability of archived wage determinations through WDOL. The proposed regulation provides for the DOL to make wage determinations available for public inspection through the National and five Regional Offices of the WHD during regular business hours and through WDOL. The proposed WDOL rule parallels the ''public inspection'' provisions that exist in the current rule geared for review of only paper documents and, adds an on-line viewing feature available through WDOL. The final rule does not provide for public inspection of wage determinations at WHD District Offices but does highlight the availability of archived copies of wage determinations through WDOL. WHD District Offices are not staffed in a way that would allow public inspections of wage determinations in the District Offices. In addition, the proposed change would require the agency to either maintain a supply of printed copies of all wage determinations available or a computer available for public use at each District Office. Adoption of the recommendation would impose a regulatory requirement to make staff available and print copies of all wage determinations in each District Office and could impose a new demand for resources not presently available. Persons in outlying areas may access wage determinations through the Internet and facilities to access the Internet are available at public libraries. Availability of a DOL computer for public inspection could also present potential security concerns for DOL's information technology systems. The WDOL website does have a capability to allow the viewing of archival copies of wage determinations that are not current, and the final rule makes that availability clear. The DOL has also incorporated this suggestion in § 1.6(c)(3)(v), with respect to Davis-Bacon wage determinations.

The DOL has received several suggestions regarding § 4.4, Obtaining a wage determination. The CSA urges inserting ''applicable,'' when referring to wage determinations in effect for a particular contracting action in § 4.4(a). The CSA wants this change since the FAR SCA price adjustment clause uses ''applicable'' to describe the basis for changing pricing when a new wage determination takes effect, tribunals use ''applicable'' when determining which wage determination is appropriate for price adjustment, and DOL uses the term for enforcement purposes. The final rule does not include the reference.

The DOL believes the proposed regulation sufficiently outlines the relevant applicable requirements and the reasons for not adopting a similar suggestion discussed in relation to § 4.1a(h) also apply to this situation.

The CSA also suggests adding the issuance of any task order issued pursuant to a GSA Schedule contract or blanket purchase agreement for commercial services to the illustrative list of contracting actions for which a contracting agency must obtain a wage determination in § 4.4(a)(1). The CSA believes adding the reference may be prudent, given the continuing growth of GSA Schedule and commercial service contracting. The final rule does not add the example. The DOL believes naming GSA schedule contracts and blanket purchase agreements may cause some confusion, because no individual task or purchase order determines the amount of the contract. The existing provisions of § 4.142 provides guidance by stating these contracts would ordinarily constitute contracts within the intent of the Act under judicially established principles.

A third CSA recommendation encourages adding a statement in § 4.4(a)(3)(i) highlighting that a contracting agency may select a wage determination through WDOL, in addition to obtaining it from DOL. The final rule does not include the additional statement. The proposed rule requires a contracting agency to obtain a wage determination for each location in which work may be performed, if the place of performance is unknown at the time of solicitation. In addition to the e98 process, contracting agencies may obtain wage determinations from DOL through WDOL. Section 4.4 (a)(2) provides a general discussion of the methods and § 4.4(b) and (c) provide specific discussions of the different ways in which a contracting agency may obtain a wage determination. In a related recommendation, the CSA suggests removing the provision in this section that requires use of the wage determination incorporated in the contract documents. The CSA believes the wage determinations apply to service employees in specific localities, not to contractors. The CSA also presents a view that, when a contractor relocates work, contracting agencies should use the WDOL or e98 process to obtain a new wage determination for the location in which the work performance actually takes place. The final rule retains the provision. The DOL does not believe that further action on this recommendation is warranted at this time and it would necessitate reopening the notice and comment process.

The DOD and Navy recommend revising § 4.4(b)(1) to have WDOL use the applicable solicitation or contract number for tracking purposes, instead of the WDOL system assigning a unique number. The final rule does not incorporate this recommendation, because it would require redesign of the WDOL system and how it interfaces with internal DOL programs, as well as considerable additional resources that are presently not available.

The DOD and Navy also recommend changing the proposed requirement in § 4.4(b)(3) for a contracting agency to monitor email addresses to having contracting agencies resubmit an e98 with a new email address each time an email address changes. These agencies also believe the DOL should establish an internal policy of requesting electronic delivery and read receipts. The final rule retains the monitoring requirement and does not establish a policy of requesting electronic delivery and read receipts. The proposed rule makes clear that contracting agencies obtaining wage determinations through WDOL bear the responsibility for insuring they incorporate the correct wage determination into any contracting action. The rule also provides flexibility to contracting agencies in how they accomplish that standard. The ''email monitoring provision'' of proposed § 4.4(b)(3) is similar to the proposed § 4.4(c)(3) requirement for contracting agencies to monitor the WDOL website to determine whether the applicable wage determination has been revised. There may also be situations, such as periods of leave (*e.g.*, 2-week vacation), during which contracting agencies may not believe it practical to update email addresses; thus, to require resubmission of an e98 in all cases could be unduly burdensome. The WDOL website provides a method for contracting agencies to contact the Division. The DOL believes the WDOL contact process is sufficient.

The DOD and Navy recommend replacing the phrase ''geographic area'' in §§ 4.4(b)(5) and (c)(4) with ''locality,'' to make the wording consistent with § 4.163(i). The DOL agrees and the final rule reflects the modification.

The DOD and Navy also seek to revise § 4.4(b)(5) and 4.5(d) to have the contracting officer follow up with the DOL, if the contracting agency has not received a response within 10 business days of the submission of the original e98 notice or within 15 business days of the submission of the collective bargaining agreement. They further suggest the regulation specify an email address and a telephone number where such follow up should be made. The DOL has not adopted the suggested changes in the final rule. Proposed § 4.4(b)(1) provides for the requester to receive a response indicating the request has been referred to an analyst, if the DOL does not provide a final response to an e98 while the requester is online. The e98 will be assigned a unique serial number to facilitate follow-up should that become necessary. Although the regulations do not provide specific timeframes for a further response by an analyst, the initial e98 response states that a further response will be provided within five days. The additional response is usually provided on the same day or the next day; however some cases may require additional time. When the DOL requires additional time or information, the analyst working on the request will provide an interim reply informing the requestor of the need and that further response will come from the email address of the analyst working on the e98 request. If the contracting officer needs to follow-up on his/her e98, it would be more efficient to address such follow-up directly to the analyst working on the e98. In those rare instances where the contracting officer does not receive at least an interim response from an analyst within five days of submission, the instructions for the e98 provide both an email address and a telephone number where requests for assistance or a status report may be sent. The DOL believes including telephone numbers and email addresses in the regulations is not the most efficient way to ensure contracting officers have access to the current address and telephone number, because such information may change. The DOL also believes contracting officers accustomed to using the internet for submitting e98s will most likely return to the e98 website, rather than turn to the DOL regulations to seek an email address or telephone number to follow-up on their e98 submission. The DOL believes that these matters are adequately addressed within the e98 system and the proposed regulations.

The CSA recommends adding a reference to the ''changes'' clause in an SCA contract to the requirement in § 4.4(c)(1) for contracting agencies to amend contracts by incorporating the correct wage determination as determined by DOL. The CSA believes the change is appropriate, because the proposed regulations (1) affect Federal agency procurement procedures and (2) are for contracting agencies. The final rule does not contain such a provision. The DOL believes the proposed rule adequately states the obligations contracting agencies have when a

contracting agency incorporates an incorrect wage determination and that the FAR is the appropriate vehicle to address the concern raised by the CSA.

The CSA suggests the DOL refer to ''information,'' instead of ''document,'' in § 4.5(a)(1), and the final rule reflects this recommendation. The CSA believes the change would make the regulation more consistent with the purpose of the regulation, to take advantage of wide use of electronic communication and information sharing. The types of ''documents'' contemplated by the proposed rule are the wage determination, including revisions received timely, for the contracting action. The DOL believes contracting agencies currently routinely use paper copies of wage determinations for insertion into contracting actions; however, the proposed rule would not preclude use of electronic documents. DOL, however, believes the more common use of ''documents'' as referring to paper and the broader use of ''information'' and ''data'' for information technology purposes make a sufficiently compelling case to adopt the suggestion.

The CSA urges the DOL to divide § 4.5(a)(2) into a general introductory statement and two subsections pertaining to special circumstances. The final rule incorporates this recommendation, because the DOL agrees this may increase understanding of the regulatory requirements. The CSA also recommends the DOL reduce the 10-day time frame discussed in the second sentence of § 4.5(a)(2). The CSA believes a 5-day period would still allow contracting agencies time to provide electronic notification to offerors of the amended solicitation and still allow offerors sufficient time to amend their proposals. The final rule does not include this second change. The current and proposed rule allow agencies to make a determination that there is not a reasonable time to notify bidders of a revised wage determination, if the agency receives notice of the revision less than 10 days before the bid opening. The DOL believes use of electronic communication may cause contracting agencies to have fewer instances in which they will make a finding of insufficient time; however, it remains appropriate for contracting agencies to have an ability to exercise this discretion based on varying factual circumstances. The CSA further seeks to change this section by (1) making any revised wage determinations received after final proposal revisions inapplicable to negotiated procurements and (2) adding a provision requiring contracting agencies to make modifications within half the time currently allowed and (3) requiring corresponding adjustment in the contract price. The final rule does not include the requested changes, because they exceed the intended scope of the proposed rule, and the DOL believes further action on this recommendation would require reopening the notice and comment process. The DOD and Navy suggest removal of the fourth sentence of this proposed section, as initially drafted, which provides that, if (1) the contract does not specify a start of performance date which is within 30 days from the award and/or (2) performance of such procurement does not commence within this 30-day period, the DOL shall be notified and any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective. The agencies believe on-line access to wage determinations through WDOL and the e98 process make it unnecessary to continue the requirement for contracting agencies to submit blanket notifications to the DOL for all contracts specifying a start of performance date of more than 30 days, originally developed under the paper Form SF–98 process. The final rule does not include the notification requirement, but the remainder of the requirement has been retained.

The CSA urges that § 4.5(a)(3) highlight that a contracting agency has received an initial or a revised wage determination on the date the DOL (1) posts the determination to the WDOL Web site or (2) sends the determination through the e98 response process. The CSA believes it is critical to emphasize that a wage determination becomes effective when published on the WDOL Web site, and not only when the contracting agency receives an e98 response from DOL, since proposed § 4.4, Obtaining a wage determination, addresses identification of the initial wage determination (whether by the WDOL or e98 process). The final rule now includes references to the initial wage determination and e98 process in § 4.5(a)(3). The proposed rule only mentions the date of publication on WDOL or date on which an agency receives a revised determination from the DOL; however, the proposed rule does not indicate that contracting agencies may also receive initial wage determinations through the e98 process. The DOL agrees the clarification proposed by the CSA could reduce confusion over the date of receipt and make it more congruous with § 4.4.

The CSA recommends revising § 4.5(c) by referring to an ''applicable'' wage determination, changing the time frame for inserting the appropriate wage determination from 30 to 15 days from the date of the DOL notification and incorporating a reference to the changes clause of the contract. The final rule does not adopt these changes, for reasons previously explained.

The DOD and Navy recommend § 4.5(d) direct the contracting officer to incorporate a complete copy of the collective bargaining agreement into the contract action, if a timely response to the e98 has not been received and the e98 involves a collective bargaining agreement. The final rule does not include this prescription, because it may not be the most efficient approach in all cases and the existing proposal provides adequate guidance and greater flexibility in addressing the underlying concern. Proposed § 4.5(d) provides that the WHD should be contacted for guidance in cases where the contracting agency has filed an e98 and has not received a response. While it is possible that the guidance will be to include the entire collective bargaining agreement in the contract action, such action may not be necessary in all cases.

The DOD, Army and Navy also express a belief that the § 4.8 requirement regarding use of Form SF–99 (Notice of Award of Contract) is no longer needed and its continuation creates an unnecessary duplication of contract reporting, in view of the enhanced reporting capabilities of the Federal Procurement Data System (FPDS). The agencies ask the DOL to eliminate the reporting requirement. The proposed rule does not include any changes in § 4.8 or this reporting requirement. The SCA coverage threshold for application of SCA wage determinations is $2,500; however, § 4.8 of the current rule requires that when a contract over $10,000 is awarded and the agency does not report the award to the FPDS via Form SF–279 (FPDS Individual Contract Action Report) or its equivalent, the agency is expected to furnish a Form SF–99 to the Wage and Hour Division unless it makes other arrangements for notifying the Division of such awards. The $10,000 reporting threshold was adopted in the SCA rules in 1983 to be consistent with the then-applicable small purchase threshold and reporting requirements of the FPDS. Prior to 1983, a Form SF–99 was required for all SCA contracts in excess of S2,500. This procedural rule, thus, originally established a reporting requirement between a federal contracting agency and the DOL only if the contract award data was not already being reported to the FPDS, thereby eliminating any duplication of reporting requirements and reducing existing

paperwork and reporting burdens on the agencies. The FPDS reporting threshold via Form SF–279, however, has since been increased to $25,000. The change in the FPDS reporting threshold, thus, has created the additional reporting burden. In any event, in the interest of eliminating any unanticipated paperwork and reporting burdens imposed by § 4.8, the DOL has decided to discontinue the use of Standard Form 99 and eliminate the reporting requirement entirely. The APA exception to the notice-and-comment procedures applies to this situation. The DOL finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public comment procedures on this procedural reporting rule are impracticable and unnecessary and would not further the public interest. Accordingly, the final rule removes and reserves § 4.8 and the DOL will discontinue using Form SF–99.

The CSA suggests removal of § 4.50(a)(2), in the absence of any correlation between the provision and the wide use of electronic communication and information sharing, or moving the discussion to § 4.56, Review and reconsideration of wage determinations. The final rule retains this provision as proposed without change. The section stresses that (1) various prevailing wage determinations may apply in a particular locality and (2) the application of these different prevailing wage determinations will depend upon the nature of the contracts to which they are applied. These differences and variations in wage determinations require that contracting agencies observe the proper protocol required by the WDOL processes when selecting the appropriate wage determination. The provisions of § 4.56 provide an appeal right for any interested party affected by a wage determination to request the Wage and Hour Administrator to review and reconsider it.

The CSA also urges revising the last sentence of § 4.54(b), to provide for the issuance of wage determinations for various localities identified by the contracting agency as set forth in § 4.4(a)(3)(i) ''using the e98 process or 4.4(c) using the WDOL process.'' The final rule does not adopt the suggested change. Section 4.54 discusses situations where services are to be performed for a Federal agency at the site of the successful bidder, in contrast to services to be performed at a specific Federal facility or installation, or in the locality of such installation. The location where the work will be performed often cannot be ascertained at the time of bid advertisement or solicitation. The § 4.4(a) introductory discussion of obtaining wage determinations applies equally to wage determinations obtained through either the e98 or WDOL processes, respectively explained in § 4.4 (b) and (c).

The CSA recommends inserting a requirement in § 4.55(a) for the WHD to review wage determinations no less often than once every two years and also seeks other changes, consistent with the recommendation for § 4.54. The final rule does not include these changes. The current and proposed regulations require periodic review of wage determinations but do not impose the maximum two-year interval between such reviews. The general requirement in SCA section 4(d) for the periodic update of wage determinations directs the contracting agencies to update wage determinations in awarded multi-year contracts. It is not a directive to DOL to update its wage determination database no less often than every two years. The DOL has not made these remaining changes, for the reasons discussed.

The CSA recommends adding a reference to the ''changes'' clause in an SCA contract to § 4.144(c)(1), pertaining to contract modifications affecting the amount of a contract. The final rule does not add the reference for the reasons previously stated. The proposed section merely conforms the provision to the e98 process and reflects the current regulation in all other respects.

The CSA makes a general recommendation to substitute ''website'' for ''Internet Web site'' and to remove quotation marks from e98. The final rule incorporates these plain language changes. The final rule does not adopt the CSA recommendation to replace ''Government'' with ''Department of Labor,'' because the DOL does not host the WDOL Web site.

IV. Regulatory Flexibility, Executive Order 12866; Small Business Regulatory Enforcement Fairness Act

This regulation affects Federal agency procurement procedures and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The agency certified to this effect to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

This rule has been treated as a significant rulemaking, although not economically significant or major, and has, therefore, been reviewed by OMB.

V. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local and tribal governments in the aggregate or by the private sector.

VI. Executive Order 13132 (Federalism)

The rule does not have federalism implications as outlined in Executive Order 13132. The rule 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.

VII. Executive Order 13175, Indian Tribal Governments

This rule does not have ''tribal implications'' under Executive Order 13175 and does not require a tribal summary impact statement. The rule does not have ''substantial direct effects 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.''

VIII. Effects on Families

The undersigned hereby certifies that the rule will not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

IX. Executive Order 13045, Protection of Children

This rule has no environmental health risk or safety risk that may disproportionately affect children.

X. Environmental Impact Assessment

A review of this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality, 40 CFR 1500 *et seq.*; and the Departmental NEPA procedures, 29 CFR part 11, indicates the rule will not have a significant impact on the quality of the human environment. There is, thus, no corresponding environmental assessment or an environmental impact statement.

XI. Executive Order 13211, Energy Supply

This rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution or use of energy.

XII. Executive Order 12630, Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, because it does not involve implementation of a policy ''that has takings implications'' or that could impose limitations on private property use.

XIII. Executive Order 12988, Civil Justice Reform Analysis

This rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a clear legal standard for affected conduct and to promote burden reduction.

List of Subjects

29 CFR Part 1

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Recordkeeping requirements, Reporting requirements, Wages.

29 CFR Part 4

Administrative practice and procedure, Government contracts, Investigations, Labor, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed at Washington, DC, this 18th day of August, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Alfred B. Robinson, Jr.,

Deputy Administrator, Wage and Hour Division.

■ For the reasons set forth above, title 29, parts 1 and 4, of the Code of Federal Regulations are amended as set forth below.

TITLE 29—LABOR

PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES

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

Authority: 5 U.S.C. 301; R.S. 161, 64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 40 U.S.C. 3141 *et seq.*; 40 U.S.C. 3145; 40 U.S.C. 3148; and the laws listed in appendix A of this part.

■ 2. Paragraph (e) is added to section 1.2 to read as follows:

§ 1.2 Definitions.[1]

* * * * *

(e) The term *Wage Determinations OnLine (WDOL)* shall mean the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at *http://www.wdol.gov*. In addition, WDOL provides compliance assistance information. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

■ 3. Paragraphs (a) and (b) of § 1.5 are revised to read as follows:

§ 1.5 Procedure for requesting wage determinations.

(a) The Department of Labor publishes general wage determinations under the Davis-Bacon Act on the WDOL Internet Web site. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, *Provided,* That questions concerning its use shall be referred to the Department of Labor in accordance with § 1.6(b).

(b)(1) If a general wage determination is not available, the Federal agency shall request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Form SF–308 to the Department of Labor at this address: U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determination, Washington, DC 20210. In preparing Form SF–308, the agency shall check only those classifications that will be needed in the performance of the work. Inserting a note such as ''entire schedule'' or ''all applicable classifications'' is not sufficient. Additional classifications needed that are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF–308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information that may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

* * * * *

■ 4. Paragraphs (a)(2), (c)(3)(iv) and (c)(3)(v) of § 1.6 are revised to read as follows:

§ 1.6 Use and effectiveness of wage determinations.

(a) * * *

(2) General wage determinations issued pursuant to § 1.5(a), notice of which is published on WDOL, shall contain no expiration date.

* * * * *

(c) * * *

(3) * * *

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published on WDOL prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is ''published'' within the meaning of this section on the date notice of a modification or a supersedeas wage determination is published on WDOL or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first. Archived versions of Davis-Bacon and Related Acts wage determinations that are no longer current may be accessed in the ''Archived DB WD'' database of WDOL for information purposes only. Contracting officers should not use an archived wage determination in a contract action without prior approval of the Department of Labor.

* * * * *

■ 5. Items 19 and 20 in Appendix A of part 1 are revised to read as follows:

Appendix A to Part 1

* * * * *

19. National Visitors Center Facilities Act of 1968 (sec. 110, 82 Stat. 45; 40 U.S.C. 808).

Note: Section applying labor standards provisions of the Davis-Bacon Act repealed August 21, 2002, by 116 Stat. 1318, Pub. L. 107–217.

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. 14701).

* * * * *

■ 6. Appendix B of Part 1 is revised to read as follows:

Appendix B to Part 1

Northeast Region

For the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia and West Virginia:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Curtis Center, 170 South Independence Mall West, Room 850 West, Philadelphia, PA 19106 (Telephone: 215–861–5800, FAX: 215–861–5840).

Southeast Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 61 Forsyth Street, SW., Room 7M40, Atlanta, GA 30303 (Telephone 404–893–4531, FAX: 404–893–4524).

Midwest Region

For the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, Room 530, Chicago, IL 60604–1591 (Telephone: 312–596–7180, FAX: 312–596–7205).

Southwest Region

For the States of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 525 South Griffin Street, Suite 800, Dallas, TX 75202–5007 (Telephone: 972–850–2600, FAX: 972–850–2601).

Western Region

For the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington:

Regional Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 71 Stevenson Street, Suite 930, San Francisco, CA 94105, (Telephone: 415–848–6600, FAX: 415–848–6655).

■ 7. Appendix C of part 1 is deleted.

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

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

Authority: 41 U.S.C. 351 *et seq.*; 41 U.S.C. 38 and 39; 5 U.S.C. 301.

Subpart A—Service Contract Labor Standards Provisions and Procedures

■ 9. In § 4.1a, paragraphs (b) and (h) are revised and paragraphs (i) and (j) are added, to read as follows:

§ 4.1a Definitions and use of terms.

(b) *Secretary* includes the Secretary of Labor, the Assistant Secretary for Employment Standards, and their authorized representatives.

* * * * *

(h) *Wage determination* includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and/or 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 which is subject to the provisions of the Service Contract Act of 1965. A wage determination is effective upon its publication on the WDOL Web site or when a Federal agency receives a response from the Department of Labor to an e98.

(i) *Wage Determinations OnLine (WDOL)* means the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at *http://www.wdol.gov.* In addition, WDOL provides compliance assistance information and a link to submit an e98 or any electronic means the Department of Labor may approve for this purpose. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

(j) The *e98* means a Department of Labor approved electronic application (*http://www.wdol.gov*), whereby a contracting officer submits pertinent information to the Department of Labor and requests a wage determination directly from the Wage and Hour Division. The term will also apply to any other process or system the Department of Labor may establish for this purpose.

■ 10. In § 4.3, paragraphs (b) through (d) are revised and paragraph (e) is added, to read as follows:

§ 4.3 Wage determinations.

* * * * *

(b) As described in subpart B of this part—Wage Determination Procedures, two types of wage determinations are issued under the Act: *Prevailing in the locality* or *Collective Bargaining Agreement (Successorship)* wage determinations. The facts related to a specific solicitation and contract will determine the type of wage determination applicable to that procurement. In addition, different types of prevailing wage determinations may be issued depending upon the nature of the contract. While prevailing wage determinations based upon cross-industry survey data are applicable to most contracts covered by the Act, in some cases the Department of Labor may issue industry specific wage determinations for application to specific types of service contracts. In addition, the geographic scope of contracts is often different and the geographic scope of the underlying survey data for the wage determinations applicable to those contracts may be different.

(c) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if Federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, revision, or supersedure.

(d) Generally, wage determinations issued for solicitations or negotiations for any contract where the place of

performance is unknown will contain minimum monetary wages and fringe benefits for the various geographic localities where the work may be performed which were identified in the initial solicitation. (See § 4.4(a)(3)(i).)

(e) Wage determinations will be available for public inspection during business hours at the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, and copies will be made available on request at Regional Offices of the Wage and Hour Division. In addition, most prevailing wage determinations are available online from WDOL. Archived versions of SCA wage determinations that are no longer current may be accessed in the ''Archived SCA WD'' database of WDOL for information purposes only. Contracting officers should not use an archived wage determination in a contract action without prior approval of the Department of Labor.

■ 11. Section 4.4 is revised to read as follows:

§ 4.4 Obtaining a wage determination.

(a)(1) Sections 2(a)(1) and (2) of the Act require that every contract and any bid specification therefore in excess of $2,500 contain a wage determination specifying the minimum monetary wages and fringe benefits to be paid to service employees performing work on the contract. The contracting agency, therefore, must obtain a wage determination prior to:

(i) Any invitation for bids;

(ii) Request for proposals;

(iii) Commencement of negotiations;

(iv) Exercise of option or contract extension;

(v) Annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress; or

(vi) Each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division.

(2) As described in § 4.4(b), wage determinations may be obtained from the Department of Labor by electronically submitting an e98 describing the proposed contract and the occupations expected to be employed on the contract. Based upon the information provided on the e98, the Department of Labor will respond with the wage determination or wage determinations that the contracting agency may rely upon as the correct wage determination(s) for the contract described in the e98. Alternatively, contracting agencies may select and obtain a wage determination using WDOL. (See § 4.4(c).) Although the WDOL Web site provides assistance to the agency to select the correct wage determination for the contract, the agency remains responsible for the wage determination selected.

(3)(i) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency, upon identification of firms participating in the procurement in response to an initial solicitation, shall obtain a wage determination for each location where the work may be performed as indicated by participating firms. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(ii) There may be unusual situations, as determined by the Department of Labor upon consultation with a contracting agency, where the procedure in paragraph (a)(3)(i) of this section is not practicable in a particular situation. In these situations, the Department may authorize a modified procedure that may result in the subsequent issuance of wage determinations for one or more composite localities.

(4) In no event may a contract subject to the Act on which more than five (5) service employees are contemplated to be employed be awarded without an appropriate wage determination. (See section 10 of the Act.)

(b) e98 process—

(1) The e98 is an electronic application used by contracting agencies to request wage determinations directly from the Wage and Hour Division. The Division uses computers to analyze information provided on the e98 and to provide a response while the requester is online, if the analysis determines that an existing wage determination is currently applicable to the procurement. The response will assign a unique serial number to the e98 and the response will provide a link to an electronic copy of the applicable wage determination(s). If the initial computer analysis cannot identify the applicable wage determination for the request, an online response will be provided indicating that the request has been referred to an analyst. Again, the online response will assign a unique serial number to the e98. After an analyst has reviewed the request, a further response will be sent to the email address identified on the e98. In most cases, the further response will provide an attachment with a copy of the applicable wage determination(s). In some cases, however, additional information may be required and the additional information will be requested via email. After an applicable wage determination is sent in response to an e98, the e98 system continues to monitor the request and if the applicable wage determination is revised in time to affect the procurement, an amended response will be sent to the email address identified on the e98.

(2) When completing an e98, it is important that all information requested be completed accurately and fully. However, several sections are particularly important. Since most responses are provided via email, a correct email address is critically important. Accurate procurement dates are essential for the follow-up response system to operate effectively. An accurate estimate of the number of service employees to be employed under the contract is also important because section 10 of the Act requires that a wage determination be issued for all contracts that involve more than five service employees.

(3) Since the e98 system automatically provides an amended response if the applicable wage determination is revised, the email address listed on the e98 must be monitored during the full solicitation stage of the procurement. Communications sent to the email address provided are deemed to be received by the contracting agency. A contracting agency must update the email address through the ''help'' process identified on the e98, if the agency no longer intends to monitor the email address.

(4) For invitations to bid, if the bid opening date is delayed by more than sixty (60) days, or if contract commencement is delayed by more than sixty (60) days for all other contract actions, the contracting agency shall submit a revised e98.

(5) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall reference the union and the collective bargaining agreement on the e98. The requester will receive an e-mail response giving instructions for

submitting a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. After receipt of the collective bargaining agreement, the Wage and Hour Division will provide a further e-mail response attaching a copy of the wage determination based upon the collective bargaining agreement. If the place of contract performance is unknown, the contracting agency will submit the collective bargaining agreement of the incumbent contractor for incorporation into a wage determination applicable to a potential bidder located in the same locality as the predecessor contractor. If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted with the copy of such agreement. (See § 4.11.) If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10 at the time of filing the e98.

(6) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall provide a statement in the comments section of the e98 concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a wage determination must be obtained on the annual anniversary date, a new wage determination shall be obtained on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(c) WDOL process—

(1) Contracting agencies may use the WDOL Web site to select the applicable prevailing wage determination for the procurement. The WDOL site provides assistance to the agency in the selection of the correct wage determination. The contracting agency, however, is fully responsible for selecting the correct wage determination. If the Department of Labor subsequently determines that an incorrect wage determination was applied to a specific contract, the contracting agency, in accordance with § 4.5, shall amend the contract to incorporate the correct wage determination as determined by the Department of Labor.

(2) If an applicable prevailing wage determination is not available on the WDOL site, the contracting agency must submit an e98 in accordance with § 4.4(b).

(3) The contracting agency shall monitor the WDOL site to determine whether the applicable wage determination has been revised. Revisions published on the WDOL site or otherwise communicated to the contracting officer within the timeframes prescribed in § 4.5(a)(2) are applicable and must be included in the resulting contract.

(4) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency may prepare a wage determination that references the collective bargaining agreement by incorporating that wage determination, with a complete copy of the collective bargaining agreement attached thereto, into the successor contract action. It need not submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so. If the place of contract performance is unknown, the contracting agency will prepare a wage determination on WDOL and attach the collective bargaining agreement of the incumbent contractor and make both the wage determination and collective bargaining agreement applicable to a potential bidder located in the same locality as the predecessor contractor. (See section 4.4(a)(3).) If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted to the Wage and Hour Division with the copy of such agreement. (See § 4.11.) If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10. A wage determination based upon the collective bargaining agreement must be included in the contract until a hearing or a final ruling of the Administrator determines that the collective bargaining agreement was not reached as the result of arm's-length negotiations or was substantially at variance with locally prevailing rates. Any questions regarding timeliness or applicability of collective bargaining agreements must be referred to the Department of Labor for resolution.

(5) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall, unless otherwise advised by the Wage and Hour Division, obtain a new wage determination on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

■ 12. Section 4.5 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 4.5 Contract specification of determined minimum wages and fringe benefits.

(a) Any contract in excess of $2,500 shall contain, as an attachment, the applicable, currently effective wage determination specifying the minimum wages and fringe benefits for service employees to be employed thereunder, including any information referred to in paragraphs (a)(1) or (2) of this section;

(1) Any wage determination from the Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the contracting agency's submission of an e98 or obtained through WDOL under § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose wages or fringe benefits were not previously covered by wage determinations, or which changes previously determined minimum wage rates and fringe benefits for service employees employed on covered contracts in the locality.

(i) However, revisions received by the Federal agency later than 10 days before the opening of bids, in the case of contracts entered into pursuant to competitive bidding procedures, shall not be effective if the Federal agency finds that there is not a reasonable time still available to notify bidders of the revision.

(ii) In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term), revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30 days of such award (or execution of an option or extension of term). Any notice of a revision received by the agency not less than 10 days before commencement of the contract shall be effective, if:

(A) The contract does not specify a start of performance date which is within 30 days from the award; and/or

(B) Performance of such procurement does not commence within this 30-day period.

(iii) In situations arising under section 4(c) of the Act, the provisions in § 4.1b(b) apply.

(3) For purposes of using WDOL databases containing prevailing wage determinations, the date of receipt by the contracting agency will be the date of publication on the WDOL Web site or on the date the agency receives actual notice of an initial or revised wage determination from the Department of Labor through the e98 process, whichever occurs first.

* * * * *

(c) Where the Department of Labor discovers and determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that the Service Contract Act did not apply to a particular procurement and/or failed to include an appropriate wage determination in a covered contract, the contracting agency, within 30 days of notification by the Department of Labor, shall include in the contract the stipulations contained in § 4.6 and any applicable wage determination issued by the Administrator or his authorized representative through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation, and termination). With respect to any contract subject to section 10 of the Act, the Administrator may require retroactive application of such wage determination. (See 53 Comp. Gen. 412, (1973); *Curtiss-Wright Corp.* v. *McLucas*, 381 F. Supp. 657 (D NJ 1974); *Marine Engineers Beneficial Assn., District 2* v. *Military Sealift Command*, 86 CCH Labor Cases ¶33,782 (D DC 1979); *Brinks, Inc.* v. *Board of Governors of the Federal Reserve System*, 466 F. Supp. 112 (D DC 1979), 466 F. Supp. 116 (D DC 1979).) (See also 32 CFR 1–403.)

(d) In cases where the contracting agency has filed an e98 and has not received a response from the Department of Labor, the contracting agency shall, with respect to any contract for which section 10 to the Act and § 4.3 for this part mandate the inclusion of an applicable wage determination, contact the Wage and Hour Division by e-mail or telephone for guidance.

§ 4.8 [Removed and Reserved]

■ 13. Section 4.8 is removed and reserved.

Subpart B—Wage Determination Procedures

■ 14. Section 4.50 is revised to read as follows:

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the locality.* (1) Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving ''due consideration'' to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act).

(2) The prevailing wage determinations applicable to most contracts covered by the Act are based upon cross-industry survey data. However, in some cases the Department of Labor may issue industry specific wage determinations for application to specific types of service contracts. In addition, the geographic scope of contracts is often different and the geographic scope of the underlying survey data for the wage determinations applicable to those contracts may be different. Therefore, a variety of different prevailing wage determinations may be applicable in a particular locality. The application of these different prevailing wage determinations will depend upon the nature of the contracts to which they are applied.

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality. (See sections 2(a)(1) and (2) as well as 4(c) of the Act.)

■ 15. Paragraph (b) of § 4.54 is revised to read as follows:

§ 4.54 Locality basis of wage and fringe benefit determinations.

* * * * *

(b) Where the services are to be performed for a Federal agency at the site of the successful bidder, in contrast to services to be performed at a specific Federal facility or installation, or in the locality of such installation, the location where the work will be performed often cannot be ascertained at the time of bid advertisement or solicitation. In such instances, wage determinations will generally be issued for the various localities identified by the agency as set forth in § 4.4(a)(3)(i).

* * * * *

■ 16. Paragraphs (a) and (b) of § 4.55 are revised to read as follows:

§ 4.55 Issuance and revision of wage determinations.

(a) Determinations will be reviewed periodically and where prevailing wage rates or fringe benefits have changed, such changes will be reflected in revised determinations. For example, in a locality where it is determined that the wage rate which prevails for a particular class of service employees is the rate specified in a collective bargaining agreement(s) applicable in that locality, and such agreement(s) specifies increases in such rates to be effective on specific dates, the determinations would be revised to reflect such changes as they become effective. Revised determinations shall be applicable to contracts in accordance with the provisions of § 4.5(a) of subpart A.

(b) Determinations issued by the Wage and Hour Division with respect to particular contracts are required to be incorporated in the invitations for bids or requests for proposals or quotations issued by the contracting agencies, and are to be incorporated in the contract specifications in accordance with § 4.5 of subpart A. In this manner, prospective contractors and subcontractors are advised of the minimum monetary wages and fringe benefits required under the most recently applicable determination to be paid the service employees who perform the contract work. These requirements are the same for all bidders so none will be placed at a competitive disadvantage.

* * * * *

Subpart C—Application of the McNamara-O'Hara Service Contract Act

■ 17. Paragraphs (e)(1)(iv)(A) and (e)(2)(iii)(A) of § 4.123 are revised to read as follows:

§ 4.123 Administrative limitations, variances, tolerances and exemptions.

* * * * *

(e) * * *

(1) * * *

(iv)(A) If the Administrator determines after award of the prime contract that any of the requirements in paragraph (e)(1) of this section for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Administrator's determination. In such case, the corrective procedures in § 4.5(c) shall be followed.

* * * * *

(2) * * *

(iii)(A) If the Administrator determines after award of the prime contract that any of the requirements in paragraph (e)(2) of this section for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the corrective procedures in § 4.5(c) shall be followed.

* * * * *

■ 18. Section 4.144 is revised to read as follows:

§ 4.144 Contract modifications affecting amount.

Where a contract that was originally issued in an amount not in excess of $2,500 is later modified so that its amount may exceed that figure, all the provisions of section 2(a) of the Act, and the regulations thereunder, are applicable from the date of modification to the date of contract completion. In the event of such modification, the contracting officer shall immediately obtain a wage determination from the Department of Labor using the e98 application or directly from WDOL, and insert the required contract clauses and any wage determination issued into the contract. In the event that a contract for services subject to the Act in excess of $2,500 is modified so that it cannot exceed $2,500, compliance with the provisions of section 2(a) of the Act and the contract clauses required thereunder ceases to be an obligation of the contractor when such modification becomes effective.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 et al.

FAA-Approved Child Restraint Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. FAA–2005–22045; Amendment Nos. 91–289, 121–314, 125–48, and 135–100]

RIN 2120–AI36

FAA-Approved Child Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) is amending its operating regulations to allow the use, on board aircraft, of Child Restraint Systems (CRSs) that are approved by the FAA through a Type Certificate, Supplemental Type Certificate, or Technical Standard Order. Current FAA regulations do not allow the use of CRSs other than those that meet specific standards for the automobile environment. The intended effect of this regulation is to reduce the regulatory burden to industry while maintaining or increasing safety.

DATES: This final rule is effective September 26, 2005. Comments must be filed on or before September 26, 2005.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22045 at the beginning of your comments, and you should file two copies of your comments.

You may also file comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Lauck Claussen, Federal Aviation Administration, Flight Standards Service, Certificate Management Office, 2800 N. 44 Street, Suite 450, Phoenix, AZ 85008, telephone (602) 379–4350, e-mail *nancy.l.claussen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Therefore, we invite interested persons to participate in this rulemaking by filing such written data, views, or arguments, as they may desire. We also invite comments about environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

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*.

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2005–22045.'' The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.cfm*.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA is issuing this rulemaking under the authority described in subtitle VII, part A, subpart i, section 40101. Under that section, the FAA is charged with developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of the commerce of the United States.

Purpose of Final Rule

Current FAA regulations require that, to be used on aircraft, a CRS meet Federal Motor Vehicle Safety Standard (FMVSS) No. 213, Child restraint systems (49 CFR 571.213), meet the standards of the United Nations, or be approved by a foreign government. FMVSS No. 213 regulates the certification of CRSs for use in trucks and automobiles. It is illegal to sell CRSs for use in motor vehicles that are not properly certified to FMVSS No. 213. Since FMVSS No. 213 CRSs are used in automobiles and trucks, these are the types of CRSs a parent or guardian is most likely to own. Therefore, these are the types of CRSs

most likely to be carried onto an airplane by a parent or guardian. The FAA has found, however, that many of the CRSs that meet FMVSS No. 213 requirements do not perform optimally in the aircraft environment. However, as stated in the preamble to Amendment No. 121–255, Child Restraint Systems, ''While some forward facing child restraint devices do not provide a desired level of protection in a worst case survivable aircraft crash, there are no better alternatives available at this time.'' (61 FR 28418; June 4, 1996)

To improve the safety of children, the FAA is amending its regulations to allow the use of alternative CRSs that improve the restraint system for children otherwise belted only with a lap belt, subject to special approval by the FAA. This approval will occur using the type certificate (TC), supplemental type certificate (STC) or Technical Standard Order (TSO) process. For more information on how the FAA will assure that FAA-approved CRSs demonstrate efficacy, see the preamble discussion under ''FAA Approval Process.''

Currently, operators wanting to use CRSs that are approved by the FAA through a TC, STC, or TSO, need to petition for an exemption to use such restraints. This final rule allows the use of CRSs that have received FAA approval through a TC, STC, or TSO without having to go through an additional process to get an exemption from our operating rules. If the FAA did not go forward with this final rule, an operator would have to petition the FAA for an exemption to use a CRS the FAA has already found to be safe through the TC, STC, or TSO process because the FAA-approved CRS would not have the required labeling. The FAA believes this final rule will reduce an administrative burden and encourage the development of innovative CRSs, while ensuring safety through the TC, STC, and TSO processes.

Existing CRS Standards

During the latter half of 1982, DOT had two standards for CRSs. CRSs for use in motor vehicles had to be certified as complying with the requirements of FMVSS No. 213. CRSs for use in aircraft had to be certified as complying with the requirements of FAA's TSO C100. In early 1983, the National Transportation Safety Board considered the safety problems posed for young children traveling in motor vehicles and aircraft and urged that a variety of actions be taken to promote the increased use of CRSs. One recommendation called for DOT to simplify its two different standards setting forth requirements for CRSs by combining the standards into a single standard. After considering the benefits that would result from the increased use of CRSs, the FAA and the National Highway Traffic Safety Administration (NHTSA) jointly concluded the process of certifying CRSs for use in both motor vehicles and aircraft could and should be simplified. The agencies proposed that NHTSA would be the sole agency responsible for administering the new FMVSS No. 213, which would be applicable to both CRSs designed for use in motor vehicles and CRSs designed for use in aircraft.

On October 15, 1992, the FAA broadened the categories of CRSs that were allowed to be used on aircraft to include CRSs that meet the standards of the United Nations or are approved by a foreign government (57 FR 42662; September 15, 1992). NHTSA does not set these standards. In the preamble, the FAA stated ''Using these restraints in an aircraft will provide a level of safety greater than that which would be provided if the young children were held in the arms of adults or if safety belts alone were used.'' (57 FR 42664)

In 1994, the FAA issued a study, included in the docket, entitled, ''The Performance of Child Restraint Devices in Transport Airplane Seats'' (the CAMI study). Among the findings, the CAMI study found that, as a class of child restraint devices, shield-type booster seats, in combination with other factors, contributed to an adbominal pressure measurement higher than in other means of protection while not preventing a head impact. In addition, the CAMI study found that vest- and harness-type devices allowed excessive forward body excursion, resulting in the test dummy sliding off the front of the seat with a high likelihood of the child's entire body impacting the seat back of the seat directly in front of it. For more information on the CAMI Study, see the preamble discussion under ''CAMI Study.''

In a final rule dated June 4, 1996, the FAA withdrew FAA approval for the use of booster seats and vest- and harness-type CRSs based on the results of the CAMI study (61 FR 28416). However, in the final rule preamble the FAA stated ''at this time, booster seats and vest- and harness-type devices put children in a potentially worse situation than the allowable alternatives. If in the future a manufacturer designs such a device that the FAA determines is a safe alternative, it will review the prohibition.'' (61 FR 28419)

On July 16, 2002 the FAA issued TSO C100b, Child Restraint System. For more information on this current TSO, see the preamble discussion under ''FAA Approval Processes.''

CAMI Study

The research for the CAMI study involved dynamic impact tests with a variety of CRSs installed in transport category aircraft passenger seats. Some of the tests were configured to represent a typical multi-row seat installation and included testing the effects of an adult occupant impact against the back of a seat in which a CRS was installed. The tests also investigated other aspects of CRS use in aircraft, including whether they fit within an aircraft passenger seat and their ease of installation.

The CAMI study made the following findings:

1. Rear-facing CRSs, for children under 20 pounds, performed well, protected the child, and could be adequately restrained with existing aircraft seat belts.

2. All eight forward-facing CRSs that were tested, for children from 20–40 pounds, when restrained with aircraft seat belts and subjected to the 16g longitudinal aircraft deceleration, failed to prevent the head from impacting the forward seatback. Routing the aircraft seat belt through a forward-facing CRS and buckling, adjusting proper tension, and unbuckling it was difficult, leading to the conclusion that some CRSs might not be easily and adequately secured to aircraft seats.

3. Normal lap belts, for children who weighed 33 pounds, provided adjustable tight fit, a belt path over the pelvic bone, and no indication of submarining or roll out during dynamic tests. However, because lap belts are not designed to inhibit upper torso flail, head impacts against the seat structure that were severe enough to cause head injury occurred during testing. These impacts were substantially higher than those exhibited in the forward CRS tests.

4. The child anthropomorphic test dummy (ATD) moved forward and over the front edge of the seat cushion and proceeded to submarine to the floor during dynamic testing of harness restraints. Elasticity in the webbing of the harness and seat belts then pulled the ATD rearward. These restraints consisted of a torso harness for the child ATD, placed in its own seat, with the airplane seat belt routed through a loop of webbing attached to the back of the harness.

You can view dynamic video of the FAA Office of Aerospace Medicine Report ''The Performance of Child Restraint Devices in Transport Airplane Passenger Seats'' at: *http://www.cami.jccbi.gov/AAM–600/Biodynamics/600Biody.html.*

Detailed Discussion of the Final Rule

The FAA is broadening the types of CRSs allowed on aircraft to include CRSs approved by the FAA through TC, STC, or TSO, similar to when we broadened the types of CRSs allowed on aircraft in 1992. This rule does not affect the use of CRSs that are already approved for use on aircraft. (See *http://www.faa.gov/passengers/childtips.cfm* for FAA recommendations on choosing the correct CRS for air travel.) If, however, a parent does not have available an FMVSS No. 213 approved CRS, a CRS that meets United Nations standards, or a CRS that is approved by a foreign government, the FAA has determined a CRS approved through the TC, STC or TSO process will better protect children who would otherwise be restrained only by a lap belt.

Properly restraining children is difficult. There is a large variance in muscle development, height, weight, and upper body strength. While CRSs meeting the FMVSS No. 213 standard do not always fit well in an aircraft, CRSs meeting this standard markedly improve the safety of a child in the under 44 pound range who would otherwise be restrained by a lap belt, or be unrestrained on a parent's lap. However, because these CRSs are bulky and sometimes difficult to install properly, many parents or guardians elect to use the standard aircraft lap belt for their child. The FAA has determined this final rule will help to make a wider variety of safe CRSs available to be used by children in the aircraft environment, thereby increasing the safety of children who would otherwise only be restrained with a lap belt.

As discussed in the preamble to the 1996 final rule, we are reviewing the prohibition against certain types of CRSs because we are aware of one innovative CRS that is safe in the aircraft environment. This CRS, made by AMSAFE, improves lap belt performance for children between 22 and 44 pounds who would otherwise be restrained only with the lap belt. The FAA's Los Angeles Aircraft Certification Office worked with AMSAFE to issue STC No. ST01781LA on April 15, 2005, for a simple supplemental adjustable restraint. The STC approves installation of this device for a specific aircraft make and models and a specific seat model. A copy of the STC may be found at *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/MainFrame?OpenFrameSet.*

Unlike the harness devices tested in the CAMI study, the AMSAFE restraint uses an additional belt/shoulder harness that goes around the seat back and attaches to the passenger lap belt, providing improved upper torso restraint. The device can be easily stowed and installed and does not need to be installed by a mechanic. Because of the design of the CRS and the additional training they will receive, the FAA has determined it is acceptable for flight attendants to install the CRS in the passenger seat. As part of the STC process, AMSAFE was required to submit to the FAA obvious, clear, and concise instructions readily available to the flight and cabin crew about the proper installation and use of the CRS.

To reduce the regulatory burden to industry while maintaining or increasing safety, the FAA is proposing to add regulatory language in 14 CFR parts 91, 121, 125, and 135 that would allow the use of CRSs the FAA has approved through a TC, STC, or TSO, even if such CRSs are booster-type or vest- and harness-type CRSs. The FAA anticipates that other manufacturers with CRSs not meeting FMVSS No. 213 will seek FAA approval through the TC, STC, or TSO process. As with the AMSAFE device, we would need to determine if the CRS is a safe alternative to methods of restraint that are already approved for use on aircraft. In each case, the CRS will need to be approved by the FAA for use in specific aircraft.

FAA Approval Processes

Under this final rule, CRSs will be approved via several different processes: TC; STC; TSO; FMVSS No. 213; foreign governments; or the standards of the United Nations. Most standards approved by foreign governments or the United Nations are similar to FMVSS No. 213. Foreign governments are responsible for determining whether to accept under their operating regulations CRSs approved by the FAA through TC, STC, or TSO. However, most countries automatically accept FAA certification without further review. The TC, STC, and TSO processes address differences in CRS design and performance. The FAA believes that allowing several methods of CRS approval will encourage CRS innovation because each manufacturer will have the ability to select the approval process that is most appropriate for its CRS, based on CRS design and proposed equivalent level of safety.

A. TC Process

A TC is an original FAA design approval in which an applicant applies for, and the FAA issues, a type certificate for a product or a major design change to a product. A product is an aircraft, an aircraft engine, or an aircraft propeller. The TC process is appropriate if a CRS is incorporated into the original aircraft design. 14 CFR part 21 contains the requirements for the issuance of a type certificate or an amendment to an existing type certificate *(http://www.gpoaccess.gov/ecfr/)*.

B. STC Process

The final rule allows a specific CRS that has met the STC testing and evaluation criteria established by the FAA to be used on a specific type of aircraft operated by a specific operator. Under the STC process, a CRS manufacturer would approach the FAA to obtain approval, via STC, for their CRS to be used on specific aircraft. In this way, the FAA can address novel and unusual design features associated with any new type of CRS when the applicable regulations do not contain adequate and appropriate safety standards for the design features of a CRS that is presented for FAA approval. The STC process is appropriate for a CRS that does not meet FMVSS No. 213 requirements.

When the FAA considers granting an STC, it publishes the proposed special conditions in the **Federal Register** for notice and comment *(http://www.gpoaccess.gov/fr/index.html)*. These proposed special conditions contain the additional safety standards the FAA considers necessary to establish a level of safety equivalent to that established by existing regulations. The proposed special conditions address the required performance of the CRS and the capability of the CRS to be installed and used without creating any safety concerns. As an example of Special Conditions, you can look at the AMSAFE Special Conditions that were part of the STC the FAA granted to AMSAFE for their CRS on April 15, 2005 (70 FR 18271; April 11, 2005).

Pertinent regulations and guidance regarding the STC process are contained in:

(1) 14 CFR part 21 subpart E, *http://www.gpoaccess.gov/ecfr/*.

(2) AC 21–40 Application Guide for Obtaining a Supplemental Type Certificate, *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf.*

C. TSO Process

A TSO is a minimum performance standard issued by the FAA for specified materials, parts, processes, and appliances used on aircraft. These performance standards must be used for an applicant to receive TSO authorization. The current listing of TSO information *(http://www.airweb.faa.gov/*

Regulatory_and_Guidance_Library/rgTSO.nsf/MainFrame?OpenFrameSet) contains a list of authorized manufacturers and articles produced by TSO Holders under a TSO Authorization or Letter of TSO Design Approval. The Web site also contains TSO C100b, Child Restraint System. TSO C100b tells people seeking a TSO Authorization or Letter of Design Approval what minimum performance standards their CRS must first meet to obtain FAA approval under the TSO process.

TSO C100b contains standards for performance testing and evaluation, operating instructions, equipment limitations, installation procedures and limitations, as well as instructions for continuing maintenance of the CRS. Unlike the STC, a TSO authorization or letter of design approval does not give installation approval. Installation approval must still be obtained via an STC, the FAA field approval process, TC, or airframe manufacturer's service bulletin.

TSO C100b is a performance standard that is similar to FMVSS No. 213. However, TSO C100b makes the testing more realistic to an aviation environment, so the chances of a CRS built to the TSO standards performing ''as tested'' on an aircraft in an accident are greater than a CRS tested under FMVSS No. 213 standards. At this point, there are not any CRSs that have been built to TSO C100b standards. The TSO process would be appropriate if a CRS is similar in design to a CRS that meets FMVSS No. 213 requirements, and also is designed to meet the specific aviation performance standards contained in TSO C100b.

Advance Notice of Proposed Rulemaking

On February 18, 1998, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) that sought public comment on issues relating to the use of CRSs in aircraft during all phases of flight (63 FR 8324). The ANPRM did not propose specific regulatory changes. Rather, it requested comments, data, and analysis to help the FAA decide the best regulatory approach to ensure the safety of children who are passengers in aircraft. The FAA has issued a separate document concerning the ANPRM. That document is being published in the **Federal Register** concurrently with this final rule.

FAA CRS Initiatives

This final rule is part of a multi-faceted FAA initiative designed to encourage the use of CRSs and to encourage the development of innovative CRSs that work well in the aviation environment. As well as working to reduce the regulatory burden to operators and CRS manufacturers by this rulemaking, the FAA has actively worked with CRS manufacturers who are seeking FAA approval by STC or TSO for innovative CRS designs. The FAA has also started a public education campaign and developed more advisory material on the use of CRSs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

The FAA finds that notice and public comment to this final rule is unnecessary. This final rule adds language to allow the use of CRSs that have received FAA approval through a TC, STC, or TSO, without having to go through the exemption process. Prior public comment is unnecessary because this amendment simply allows alternative processes, such as the TC, STC, or TSO processes, by which a CRS can be approved for use in aircraft. We do not anticipate significant public comment on this amendment, since it does not impose a requirement. In addition, there is already precedent for allowing alternative methods of approving a CRS that do not have required labeling for use in aircraft. In the current rule, this includes a label showing approval from a foreign government or a label showing the CRS was manufactured under the standards of the United Nations.

Adding this language will not have an adverse safety impact, because the language merely recognizes alternative approval processes for CRSs, and makes FAA-approved CRSs available to operators and their passengers without using the exemption process. As a result, the FAA has determined that there is no reason to further delay this relief and good cause exists for making this rule effective 30 days after publication.

Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Final rules to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected cost impact is so minimal that a rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble and a full regulatory evaluation cost benefit evaluation need not be prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

This final rule adds language to allow the use of CRSs that have received FAA approval, through a TC, STC, or TSO, without having to go through the exemption process. This final rule simply allows alternative processes, such as the TC, STC, or TSO processes, by which a CRS can be approved for use in aircraft. Adding this language does not have an adverse safety impact, because the language merely recognizes alternative approval processes for CRSs. This final rule reduces the regulatory burden to industry by taking away the necessity to go through the exemption process after the successful completion of the rigorous TC, STC, or TSO process for a particular CRS. It also lessens the need for FAA resources to process numerous exemption requests.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule adds language to allow the use of CRSs that have received FAA approval through a TC, STC or TSO, without having to go through the exemption process. Its economic impact is minimal. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

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 $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this final rule qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Amendments

■ In consideration of the foregoing the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat.1180).

■ 2. Amend § 91. 107 by revising paragraphs (a)(3)(iii)(B)(*3*) and (*4*) to read as follows:

§ 91.107 Use of safety belts, shoulder harnesses, and child restraint systems.

(a) * * *
(2) * * *
(3) * * *
(iii) * * *
(B) * * *

(*3*) Seats that do not qualify under paragraphs (a)(3)(iii)(B)(*1*) and (a)(3)(iii)(B)(*2*) of this section must bear a label or markings showing:

(*i*) That the seat was approved by a foreign government;

(*ii*) That the seat was manufactured under the standards of the United Nations; or

(*iii*) That the seat or child restraint device furnished by the operator was

approved by the FAA through Type Certificate, Supplemental Type Certificate, or applicable Technical Standard Order.

(*4*) Except as provided in § 91.107(a)(3)(iii)(B)*(3)(iii)*, notwithstanding any other provision of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 4. Amend § 121.311 by revising paragraphs (b)(2)(ii)(C) and (D) to read as follows:

§ 121.311 Seats, safety belts, and shoulder harnesses.

(b) * * *

(2) * * *

(ii) * * *

(C) Seats that do not qualify under paragraphs (B)(2)(ii)(A) and (b)(2)(ii)(B) of this section must bear a label or markings showing:

(*1*) That the seat was approved by a foreign government;

(*2*) That the seat was manufactured under the standards of the United Nations; or

(*3*) That the seat or child restraint device furnished by the certificate holder was approved by the FAA through Type Certificate, Supplemental Type Certificate, or applicable Technical Standard Order.

(D) Except as provided in § 121.311(b)(2)(ii)(C)(*3*), notwithstanding any other provision of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–4717, 44722.

■ 6. Amend § 125.211 by revising paragraphs (b)(2)(ii)(C) and (D) to read as follows:

§ 125.211 Seat and safety belts.

(b) * * *

(2) * * *

(ii) * * *

(C) Seats that do not qualify under paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this section must bear a label or markings showing:

(*1*) That the seat was approved by a foreign government;

(*2*) That the seat was manufactured under the standards of the United Nations; or

(*3*) That the seat or child restraint device furnished by the certificate holder was approved by the FAA through Type Certificate, Supplemental Type Certificate, or applicable Technical Standard Order.

(D) Except as provided in § 125.211(b)(2)(ii)(C)(*3*), notwithstanding any other provision of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

■ 7. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 13. Amend § 135.128 by revising paragraphs (a)(2)(ii)(C) and (D) to read as follows:

§ 135.128 Use of safety belts and child restraint systems.

(a) * * *

(2) * * *

(ii) * * *

(C) Seats that do not qualify under paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section must bear a label or markings showing:

(*1*) That the seat was approved by a foreign government;

(*2*) That the seat was manufactured under the standards of the United Nations;

(*3*) That the seat or child restraint device furnished by the certificate holder was approved by the FAA through Type Certificate, Supplemental Type Certificate, or applicable Technical Standard Order.

(D) Except as provided in § 135.128(a)(2)(ii)(C)(*3*), notwithstanding any other provision of this section, booster-type child restraint systems (as defined in Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213)), vest- and harness-type child restraint systems, and lap held child restraints are not approved for use in aircraft; and

* * * * *

Issued in Washington, DC, on July 28, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–16782 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
August 26, 2005

Part VI

Department of Housing and Urban Development

Federal Property Suitable as Facilities to Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–34]

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: Army: Ms. Audrey C. Ormerod, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM-MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 601–2520; (These are not toll-free numbers).

Dated: August 18, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program, Federal Register Report for 8/26/05

Suitable/Available Properties

Buildings (by State)

Alaska

Armory
NG Noorvik
Noorvik AK 99763–
Landholding Agency: Army
Property Number: 21200110075
Status: Unutilized
Comment: 1200 sq. ft., most recent use—armory, off-site use only

Bldg. 00001
Kiana Natl Guard Armory
Kiana AK 99749–
Landholding Agency: Army
Property Number: 21200340075
Status: Excess
Comment: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Wainwright Armory
Wainwright Co: AK 99782–
Landholding Agency: Army
Property Number: 21200510055
Status: Excess
Comment: 1200 sq. ft., presence of asbestos, most recent use—storage

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only

Bldg. 43002
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200440066
Status: Excess
Comment: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

California

Bldgs. 18026, 18028
Camp Roberts
Monterey CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comment: 2024 sq. ft. & 487 sq. ft., concrete, poor condition, off-site use only

Colorado

Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130084
Status: Unutilized
Comment: 400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only

Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only

Bldg. S6263
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310051
Status: Unutilized
Comment: 24,902 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—offices, off-site use only

Bldg. S6268
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340085
Status: Unutilized
Comment: 840 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 25, 26, 27
Pueblo Chemical Depot
Pueblo CO 81006–
Landholding Agency: Army
Property Number: 21200420178
Status: Unutilized
Comment: 1311 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 00127
Pueblo Chemical Depot
Pueblo CO 81006–
Landholding Agency: Army
Property Number: 21200420179
Status: Unutilized
Comment: 8067 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Georgia

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only

Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only

Bldg 4051, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only

Bldg. 92
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 4232
Fort Benning
Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 2288

Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin.

Bldg. 2508
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only

Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only

Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldgs. T–1005, T–1006, T–1007
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030086
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1015, T–1016, T–1017
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030087
Status: Excess
Comment: 7496 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1018, T–1019
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030088
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1020, T–1021
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030089
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1022
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030090
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—supply center, off-site use only

Bldg. T–1027
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030091
Status: Excess
Comment: 9024 sq ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1028
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030092
Status: Excess
Comment: 7496 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1035, T–1036, T–1037
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030093
Status: Excess
Comment: 1626 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1038, T–1039
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030094
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1040, T–1042
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030095
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1086, T–1087, T–1088
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030096
Status: Excess
Comment: 7680 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
Comment: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042
Status: Excess
Comment: 1440 sq. ft., off-site use only

Bldg. T0251
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230043
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
Comment: 5220 sq. ft. each, off-site use only

Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
Comment: 5220 sq. ft., off-site use only

Bldg. T0470
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230046
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldg. T1191
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230047

Status: Excess
Comment: 9386 sq. ft., off-site use only

Bldg. T1192
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230048
Status: Excess
Comment: 3992 sq. ft., off-site use only

Bldgs. 00064, 00065
Camp Frank D. Merrill
Dahlonega Co: Lumpkin GA 30597–
Landholding Agency: Army
Property Number: 21200330108
Status: Unutilized
Comment: 648 sq. ft. each, concrete block, most recent use—water support treatment bldg., off-site use only

Bldg. 00232
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420007
Status: Excess
Comment: 2436 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P1450
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420027
Status: Excess
Comment: 100,230 sq. ft., most recent use—health clinic, off-site use only

Bldg. 4151
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420032
Status: Excess
Comment: 3169 sq. ft., most recent use—battle lab, off-site use only

Bldg. 4152
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420033
Status: Excess
Comment: 721 sq. ft., most recent use—battle lab, off-site use only

Bldg. 4476
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420034
Status: Excess
Comment: 3148 sq. ft., most recent use—veh. maint. shop, off-site use only

Bldg. 8771
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420044
Status: Excess
Comment: 972 sq. ft., most recent use—RH/TGT house, off-site use only

Bldg. 9029
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420050
Status: Excess
Comment: 7356 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. 11370
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420051
Status: Excess
Comment: 9602 sq. ft., most recent use—nco/enl bldg., off-site use only

Bldg. T924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420194
Status: Excess
Comment: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 01133
Hunter Army Airfield
Chatham Co: GA 31409–
Landholding Agency: Army
Property Number: 21200510062
Status: Excess
Comment: 1024 sq. ft., most recent use—storage, off-site use only

Bldg. 00924
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200510065
Status: Excess
Comment: 9360 sq. ft., most recent use—warehouse, off-site use only

Bldg. 07780
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200510070
Status: Excess
Comment: 1344 sq. ft., most recent use—air field ops., off-site use only

Bldg. 05955
Fort Benning
Chattachoochee Co: GA 31905–
Landholder Agency: Army
Property Number: 21200520097
Status: Unutilized
Comment: 95 sq. ft., poor condition, most recent use—dispatch, off-site use only

Bldg. 9012
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520098
Status: Unutilized
Comment: 40,442 sq. ft., poor condition, most recent use—enlisted housing, off-site use only

Bldg. 9016
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520101
Status: Unutilized
Comment: 6138 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldg. 9019
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520102
Status: Unutilized
Comment: 7243 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldgs. 9027, 9036, 9044
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520103
Status: Unutilized
Comment: various sq. ft., poor condition, most recent use—CO HQ Bldg., off-site use only

Bldg. 9100
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520107
Status: Unutilized
Comment: 4875 sq. ft., poor condition, most recent use—BDE HQ Bldg., off-site use only

Bldgs. 9198, 9199
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520108
Status: Unutilized
Comment: 1008 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. 10642
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520111
Status: Unutilized
Comment: 176 sq. ft., poor condition, most recent use—storage shed, off-site use only

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. AR112
Sheridan Reserve
Arlington Heights IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comment: 1000 sq. ft., off-site use only

Iowa

Bldg. 00691
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 21200510073
Status: Unutilized
Comment: 2581 sq. ft. residence, presence of lead paint, possible asbestos

Bldg. 00691

Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 21200520113
Status: Unutilized
Comment: 2581 sq. ft., presence of asbestos/lead paint, most recent use—residential

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Maryland

Bldg. 0459B
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
Comment: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
Comment: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E3728
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120109
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, most recent use—testing facility, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comment: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comment: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comment: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comment: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
Comment: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

Bldg. 949
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140083
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 979
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140084
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 02207
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220112
Status: Unutilized
Comment: 6855 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
Comment: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 00375
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320107
Status: Unutilized
Comment: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320110
Status: Unutilized
Comment: 944 sq. ft., off-site use only

Bldg. 00523
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320113
Status: Unutilized
Comment: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 00649
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320116
Status: Unutilized
Comment: 1079 sq. ft., most recent use—storage, off-site use only

Bldg. 00657
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320119
Status: Unutilized
Comment: 1048 sq. ft., most recent use—bunker, off-site use only

Bldg. 0700B
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320121
Status: Unutilized
Comment: 505 sq. ft., off-site use only

Bldg. 01113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320128
Status: Unutilized
Comment: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320129
Status: Unutilized
Comment: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldgs. 02373, 02378
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320130
Status: Unutilized
Comment: 8359 sq. ft., most recent use—training, off-site use only

Bldg. 03558
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320133
Status: Unutilized
Comment: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320136
Status: Unutilized
Comment: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320137
Status: Unutilized

Comment: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E5108
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320147
Status: Unutilized
Comment: 5155 sq. ft., most recent use—recreation center, off-site use only

Bldg. E5483
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320148
Status: Unutilized
Comment: 2140 sq. ft., most recent use—vehicle storage, off-site use only

Bldg. E5645
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320150
Status: Unutilized
Comment: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330111
Status: Unutilized
Comment: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330112
Status: Unutilized
Comment: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330114
Status: Unutilized
Comment: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldg. 00914
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330118
Status: Unutilized
Comment: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330119
Status: Unutilized
Comment: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330126
Status: Unutilized
Comment: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330127
Status: Unutilized
Comment: needs rehab, most recent use—observation tower, off-site use only

Bldg. E2350A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330132
Status: Unutilized
Comment: 325 sq. ft., need rehab, most recent use—oil storage, off-site use only

Bldg. 2456
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E3175
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330134
Status: Unutilized
Comment: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E3224, E3228, E3230, E3232, E3234
Landholding Agency: Army
Property Number: 21200330135
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330136
Status: Unutilized
Comment: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldgs. E3269, E3270
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330138
Status: Unutilized
Comment: 200/1200 sq. ft., needs rehab, most recent use—flam. storage, off-site use only

Bldg. E3300
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330139
Status: Unutilized
Comment: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330144
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330145
Status: Unutilized
Comment: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330148
Status: Unutilized
Comment: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldgs. 03554, 03556
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330149
Status: Unutilized
Comment: 18,000/9,000 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E4420
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330151
Status: Unutilized
Comment: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

Bldg. E4733
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330152
Status: Unutilized
Comment: 2252 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E4734
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330153
Status: Unutilized
Comment: 1114 sq. ft., needs rehab, most recent use—private club, off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E5005, E5049, E5050, E5051
Landholding Agency: Army
Property Number: 21200330154
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330155
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 05447
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330160

Status: Unutilized
Comment: 2464 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. 05448, 05449
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330161
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330162
Status: Unutilized
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330163
Status: Unutilized
Comment: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330164
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05456, 05459, 05460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330165
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted bldg., off-site use only

Bldg. E5609
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330167
Status: Unutilized
Comment: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330168
Status: Unutilized
Comment: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330169
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330171
Status: Unutilized
Comment: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5854
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330174
Status: Unutilized
Comment: 5166 sq. ft., needs rehab, most recent use—eng/MTN bldg., off-site use only

Bldg. E5942
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330176
Status: Unutilized
Comment: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330177
Status: Unutilized
Comment: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330178
Status: Unutilized
Comment: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330179
Status: Unutilized
Comment: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. E7931
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330182
Status: Unutilized
Comment: needs rehab, most recent use—sewer treatment, off-site use only

Bldg. 1145D
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420054
Status: Unutilized
Comment: 898 sq. ft., most recent use—storage, off-site use only

Bldg. 3070A
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420055
Status: Unutilized
Comment: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420056
Status: Unutilized
Comment: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Aberdeen Proving Ground
Harford MD 21005–
Landholding Agency: Army
Property Number: 21200420057
Status: Unutilized
Comment: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldgs. 00733, 00734
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200430063
Status: Unutilized
Comment: 136 sq. ft. each, most recent use—ammo storage, off-site use only

Bldg. 0401A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440068
Status: Unutilized
Comment: 220 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0748A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440069
Status: Unutilized
Comment: 112 sq. ft., needs rehab, most recent use—shelter, off-site use only

Bldg. 01198
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440070
Status: Unutilized
Comment: 168 sq. ft., needs rehab, most recent use—ordnance, off-site use only

Bldg. 03557
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440071
Status: Unutilized
Comment: 340 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3732
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440072
Status: Unutilized
Comment: 1080 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5876
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440073
Status: Unutilized
Comment: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

Missouri

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized

Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07036, 07050, 07054, 07102, 07400, 07401, 08245, 08249, 08251, 08255, 08257, 08261.
Landholding Agency: Army
Property Number: 21200410110
Status: Unutilized
Comment: 7152 sq. ft. 6 plex housing quarters, potential contaminants, off-site use only

6 Bldg.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07044, 07106, 07107, 08260, 08281, 08300
Landholding Agency: Army
Property Number: 21200410111
Status: Unutilized
Comment: 9520 sq ft., 8 plex housing quarters, potential contaminants, off-site use only

15 Bldgs.
Fort Leaonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Landholding Agency: Army
Property Number: 21200410112
Status: Unutilized
Comment: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldgs. 08283, 08285
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410113
Status: Unutilized
Comment: 2240 sq ft, 2 plex housing quarters, potential contaminants, off-site use only

15 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Location: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290–08296, 08301
Landholding Agency: Army
Property Number: 21200410114
Status: Unutilized
Comment: 4784 sq ft., 4 plex housing quarters, potential contaminants, off-site use only

Bldg. 09432
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410115
Status: Unutilized
Comment: 8724 sq ft., 6-plex housing quarters, potential contaminants, off-site use only

Bldgs. 5006 and 5013
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200430064
Status: Unutilized
Comment: 192 & 144 sq. ft., needs repair, most recent use—generator bldg., off-site use only

Bldgs. 13210, 13710
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200430065
Status: Unutilized
Comment: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Jersey

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21200230062
Status: Excess
Comment: 107 sq. ft., most recent use—security, off-site use only

New York

5 Bldgs.
Orangeburg USARC #206, 207, 208, 218, 223
Orangeburg Co: Rockland NY 10962–2209
Landholding Agency: Army
Property Number: 21200310061
Status: Unutilized
Comment: various sq. ft., need major repairs, presence of lead paint, most recent use—admin/storage, off-site use only

Bldg. 1227
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 21200440074
Status: Unutilized
Comment: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Landholding Agency: Army
Property Number: 21200510067
Status: Unutilized
Comment: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

7 Bldgs.
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Location: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Landholding Agency: Army
Property Number: 21200510068
Status: Unutilized
Comment: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Tappan USARC
335 Western Hwy
Tappan Co: Rockland NY 10983–
Landholding Agency: Army
Property Number: 21200510069
Status: Excess
Comment: 33,537 sq. ft., army reserve center

North Carolina

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Landholding Agency: Army
Property Number: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/ metal storage shed, needs major repair, presence of asbestos/lead paint, off-site use only

Oklahoma

Bldg. T–838, Fort Sill 838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized
Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–2952 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building P–5042 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

Bldg. T–810 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1468, T–1469 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill

Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135
Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comment: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comment: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comment: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comment:
3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 01276, 01278
Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21200520119
Status: Unutilized
Comment: 1533 & 2700 sq. ft., most recent use—maintenance, off-site use only

Pennsylvania

5 Bldgs.
Carlisle Barracks
00441 thru 00445
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21200430066
Status: Unutilized
Comment: 4238 sq. ft. each, presence of asbestos, most recent use—residential, off-site use only

South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin

Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin

Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage

Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200030109
Status: Unutilized
Comment: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

Texas

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044

Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207
Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 120
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220137
Status: Unutilized
Comment: 1450 sq. ft., most recent use—dental clinic, off-site use only

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comment: 2160 sq. ft., most recent use—admin., off-site use only

Bldg. 56402
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220144
Status: Unutilized
Comment: 2680 sq. ft., most recent use—recreation center, off-site use only

Bldgs. 56403, 56405
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220145
Status: Unutilized
Comment: 480 sq. ft., most recent use—shower, off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56630, 56631
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220149
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comment: 1306 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. P6220, P6222
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX–
Landholding Agency: Army
Property Number: 21200330197
Status: Unutilized
Comment: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX–
Landholding Agency: Army
Property Number: 21200330198
Status: Unutilized
Comment: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldg. 04200
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200420065
Status: Unutilized
Comment: 2100 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Virginia

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis
Ft. Eustis VA 23604–
Landholding Agency: Army
Property Number: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only

Bldg. 1559
Fort Eustis
Ft. Eustis VA 23604–
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only

Bldg. T–707
Fort Eustis
Ft. Eustis VA 23604–
Landholding Agency: Army
Property Number: 21200330199
Status: Unutilized
Comment: 3763 sq. ft., most recent use—chapel, off-site use only

Washington

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–

Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. CO509, CO709, CO720
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: Needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA–
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess

Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307
Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Wisconsin

Bldg. 01567
Fort McCoy
Monroe Co: WI 54656–
Landholding Agency: Army
Property Number: 21200520122
Status: Unutilized
Comment: 112 sq. ft. shelter, off-site use only

Land (by State)

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

Ohio

Land
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200340094
Status: Excess
Comment: 11 acres, railroad access

South Carolina

One Acre
Fort Jackson
Columbia Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200110089
Status: Underutilized
Comment: approx. 1 acre

Texas

1 acre
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200440075
Status: Excess
Comment: 1 acre, grassy area

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comment: 800 sq. ft., most recent use—office, off-site use only

Bldg. 30105
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200510052
Status: Excess
Comment: 4100 sq. ft., most recent use—admin., off-site use only

Bldg. 40115
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200510053
Status: Excess
Comment: 34,520 sq. ft., most recent use—storage, off-site use only

Bldg. 25303
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200520074
Status: Excess
Comment: 800 sq. ft., most recent use—airfield operations, off-site use only

Bldg. 25304
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200520075
Status: Excess
Comment: 1200 sq. ft., poor condition, most recent use—fire station, off-site use only

Arizona

Bldg. 13570
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520076
Status: Excess
Comment: 4000 sq. ft., most recent use—storage, off-site use only

Bldg. 22529
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520077
Status: Excess
Comment: 2543 sq. ft., most recent use—storage, off-site use only

Bldg. 22541
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520078
Status: Excess
Comment: 1300 sq. ft., most recent use—storage, off-site use only

Bldg. 30020
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520079
Status: Excess
Comment: 1305 sq. ft., most recent use—storage, off-site use only

Bldg. 30021
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520080
Status: Excess
Comment: 144 sq. ft., most recent use—storage, off-site use only

Bldgs. 80709, 80710
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520081
Status: Excess
Comment: 1231 sq. ft., most recent use—admin., off-site use only

Bldg. 90203
Fort Huachuca
Cochise Co: AZ 85613–7010

Landholding Agency: Army
Property Number: 21200520082
Status: Excess
Comment: 165 sq. ft., most recent use—storage, off-site use only

Bldg. 90311
Fort Huachuca
Cochise Co: AZ 85613–7010
Landholding Agency: Army
Property Number: 21200520083
Status: Excess
Comment: 1357 sq. ft., most recent use—storage, off-site use only

Colorado

Bldg. S6222
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340082
Status: Unutilized
Comment: 19,225 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. S6264
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200340084
Status: Unutilized
Comment: 19,499 sq. ft., most recent use—office, off-site use only

Bldg. S6220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420175
Status: Unutilized
Comment: 12,361 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. S6285
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420176
Status: Unutilized
Comment: 19,478 sq. ft., most recent use—admin., off-site use only

Bldg. S6287
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420177
Status: Unutilized
Comment: 10,076 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 06225
Fort Carson
El Paso Co: CO 80913–4001
Landholding Agency: Army
Property Number: 21200520084
Status: Unutilized
Comment: 24,263 sq. ft., most recent use—admin., off-site use only

Bldg. 06280
Fort Carson
El Paso Co: CO 80913–4001
Landholding Agency: Army
Property Number: 21200520085
Status: Unutilized
Comment: 20597 sq. ft., most recent use—gen. inst., off-site use only

Bldgs. 06281, 06282, 06283
Fort Carson
El Pase Co: CO 80913–4001
Landholding Agency: Army
Property Number: 21200520086
Status: Unutilized
Comment: 19478 sq. ft., most recent use—gen. inst., off-site use only

Georgia

Bldg. T–920
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200240083
Status: Excess
Comment: 13,337 sq. ft., most recent use—office, off-site use only

Bldgs. 00960, 00961, 00963
Fort Benning
Ft. Benning Co: Chattahoochee GA
Landholding Agency: Army
Property Number: 21200330107
Status: Unutilized
Comment: 11,110 sq. ft., most recent use—housing, off-site use only

Bldg. T201
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420002
Status: Excess
Comment: 1828 sq. ft., most recent use—credit union, off-site use only

Bldg. T202
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420003
Status: Excess
Comment: 5602 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. T222
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420004
Status: Excess
Comment: 2891 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P223
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420005
Status: Excess
Comment: 6434 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P224
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420006
Status: Excess
Comment: 6434 sq. ft., most recent use—enlisted bldg., off-site use only

Bldg. T234
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420008
Status: Excess
Comment: 2624 sq. ft., most recent use—admin., off-site use only

Bldg. T235
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420009
Status: Excess
Comment: 1842 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. T702
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420010
Status: Excess
Comment: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T703
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420011
Status: Excess
Comment: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. T704
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420012
Status: Excess
Comment: 9190 sq. ft., most recent use—storage, off-site use only

Bldg. P813
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420013
Status: Excess
Comment: 43,055 sq. ft., most recent use—maint. hanger/Co Hq., off-site use only

Bldgs. S843, S844, S845
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420014
Status: Excess
Comment: 9383 sq. ft., most recent use—maint hanger, off-site use only

Bldg. P925
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420015
Status: Excess
Comment: 27,681 sq. ft., most recent use—fitness center, off-site use only

Bldg. S1227
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420016
Status: Excess
Comment: 2750 sq. ft., most recent use—admin., off-site use only

Bldg. S1248
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420017
Status: Excess
Comment: 1450 sq. ft., most recent use—police station, off-site use only

Bldg. S1251
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420018
Status: Excess

Comment: 3300 sq. ft., most recent use—police station, off-site use only

Bldg. T1254
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420019
Status: Excess
Comment: 4720 sq. ft., most recent use—transient UPH, off-site use only

Bldg. S1259
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420020
Status: Excess
Comment: 1750 sq. ft., most recent use—admin., off-site use only

Bldg. S1260
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420021
Status: Excess
Comment: 1750 sq.ft., most recent use—exchange service outlet, off-site use only

Bldg. P1275
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420022
Status: Excess
Comment: 138,032 sq. ft., most recent use—dining facility, off-site use only

Bldg. P1276
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420023
Status: Excess
Comment: 138,032 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. P1277
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420024
Status: Excess
Comment: 13,981 sq. ft., most recent use—barracks/dining, off-site use only

Bldg. T1412
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420025
Status: Excess
Comment: 9186 sq. ft., most recent use—warehouse, off-site use only

Bldg. T1413
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420026
Status: Excess
Comment: 21,483 sq. ft., most recent use—fitness center/warehouse, off-site use only

Bldg. P8058
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420028
Status: Excess
Comment: 1808 sq. ft., most recent use—control tower, off-site use only

Bldg. 8658
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420029
Status: Excess
Comment: 8470 sq. ft., most recent use—storage, off-site use only

Bldg. 8659
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420030
Status: Excess
Comment: 8470 sq. ft., most recent use—storage, off-site use only

Bldgs. 8675, 8676
Hunter Army Airfield
Garrison Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200420031
Status: Excess
Comment: 4000 sq. ft., most recent use—ship/recv facility, off-site use only

Bldgs. 5962–5966
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420035
Status: Excess
Comment: 2421 sq. ft., most recent use—igloo storage, off-site use only

Bldgs. 5967–5971
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420036
Status: Excess
Comment: 1813 sq. ft., most recent use—igloo storage, off-site use only

Bldgs. 5974–5977
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420037
Status: Excess
Comment: 400 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5978
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420038
Status: Excess
Comment: 1344 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5981
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420039
Status: Excess
Comment: 2028 sq. ft., most recent use—ammo storage, off-site use only

Bldgs. 5984–5988
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420040
Status: Excess
Comment: 1816 sq. ft., most recent use—igloo storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420041
Status: Excess
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420042
Status: Excess
Comment: 2016 sq. ft., most recent use—ammo storage, off-site use only

Bldg. 5995
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420043
Status: Excess
Comment: 114 sq. ft., most recent use—storage, off-site use only

Bldg. 9000
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420045
Status: Excess
Comment: 9313 sq. ft., most recent use—headquarters bldg., off-site use only

Bldgs. 9002, 9005
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420046
Status: Excess
Comment: 3555 sq. ft., most recent use—classroom, off-site use only

Bldg. 9025
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420047
Status: Excess
Comment: 3707 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. 9026
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200420048
Status: Excess
Comment: 3867 sq. ft., most recent use—headquarters bldg., off-site use only

Bldg. T01
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420181
Status: Excess
Comment: 11,682 sq. ft., most recent use—admin., off-site use only

Bldg. T04
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420182
Status: Excess
Comment: 8292 sq. ft., most recent use—admin., off-site use only

Bldg. T05
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army

Property Number: 21200420183
Status: Excess
Comment: 7992 sq. ft., most recent use—admin., off-site use only

Bldg. T06
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420184
Status: Excess
Comment: 3305 sq. ft., most recent use—communication center, off-site use only

Bldg. T08
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420185
Status: Excess
Comment: 7670 sq. ft., most recent use—admin., off-site use only

Bldg. 00037
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420186
Status: Excess
Comment: 2833 sq. ft., most recent use—admin., off-site use only

Bldg. T55
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420187
Status: Excess
Comment: 6490 sq. ft., most recent use—admin., off-site use only

Bldg. T85
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420188
Status: Excess
Comment: 3283 sq. ft., most recent use—post chapel, off-site use only

Bldg. T131
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420189
Status: Excess
Comment: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T132
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420190
Status: Excess
Comment: 4720 sq. ft., most recent use—admin., off-site use only

Bldg. T157
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420191
Status: Excess
Comment: 1440 sq. ft., most recent use—education center, off-site use only

Bldg. 00916
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420192
Status: Excess
Comment: 642 sq. ft., most recent use—warehouse, off-site use only

Bldg. 00923
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420193
Status: Excess
Comment: 2436 sq. ft., most recent use—admin., off-site use only

Bldg. P925
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420195
Status: Excess
Comment: 3115 sq. ft., most recent use—motor repair shop, off-site use only

Bldg. 00926
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420196
Status: Excess
Comment: 357 sq. ft., most recent use—warehouse, off-site use only

Bldg. 01002
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420197
Status: Excess
Comment: 9267 sq. ft., most recent use—maintenance shop, off-site use only

Bldg. 01003
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420198
Status: Excess
Comment: 9267 sq. ft., most recent use—admin, off-site use only

Bldg. T1004
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420199
Status: Excess
Comment: 9272 sq. ft., most recent use—warehouse, off-site use only

Bldg. T1023
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420200
Status: Excess
Comment: 9267 sq. ft., most recent use—warehouse, off-site use only

Bldg. T1041
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420201
Status: Excess
Comment: 1626 sq. ft., most recent use—storage, off-site use only

Bldg. T1043
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420202
Status: Excess
Comment: 3825 sq. ft., most recent use—admin., off-site use only

Bldg. T1045
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420203
Status: Excess
Comment: 600 sq. ft., most recent use—shop, off-site use only

Bldg. T106
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420204
Status: Excess
Comment: 650 sq. ft., most recent use—heat plant bldg., off-site use only

Bldg. T1047
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420205
Status: Excess
Comment: 3000 sq. ft., most recent use—wash. platform/org., off-site use only

Bldg. T1049
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420206
Status: Excess
Comment: 768 sq. ft., most recent use—engine test facility, off-site use only

Bldg. T1050
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420207
Status: Excess
Comment: 3114 sq. ft., most recent use—shop, off-site use only

Bldg. T1051
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420208
Status: Excess
Comment: 12,205 sq. ft., most recent use—shop, off-site use only

Bldg. T1056
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420209
Status: Excess
Comment: 18,260 sq. ft., most recent use—shop, off-site use only

Bldg. T1057
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420210
Status: Excess
Comment: 18,260 sq. ft., most recent use—warehouse, off-site use only

Bldg. T1058
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420211
Status: Excess
Comment: 18,260 sq. ft., most recent use—storage, off-site use only

Bldg. T1062
Fort Stewart

Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420212
Status: Excess
Comment: 5520 sq. ft., most recent use—general purpose, off-site use only

Bldg. T1069
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420213
Status: Excess
Comment: 14,096 sq. ft., most recent use—shop, off-site use only

Bldg. T1083
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420214
Status: Excess
Comment: 2816 sq. ft., most recent use—storage, off-site use only

Bldg. 19101
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420215
Status: Excess
Comment: 6773 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. 19102
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420216
Status: Excess
Comment: 3250 sq. ft., most recent use—simulator bldg., off-site use only

Bldg. T19111
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420217
Status: Excess
Comment: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. 19112
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420218
Status: Excess
Comment: 1344 sq. ft., most recent use—storage, off-site use only

Bldg. 19113
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420219
Status: Excess
Comment: 1440 sq. ft., most recent use—admin., off-site use only

Bldg. T19201
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420220
Status: Excess
Comment: 960 sq. ft., most recent use—physical fitness center, off-site use only

Bldg. 19202
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420221
Status: Excess
Comment: 1210 sq. ft., most recent use—community center, off-site use only

Bldgs. 19204 thru 19207
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420222
Status: Excess
Comment: 960 sq. ft., most recent use—admin., off-site use only

Bldgs. 19208 thru 19211
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420223
Status: Excess
Comment: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19212
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420224
Status: Excess
Comment: 1248 sq. ft., off-site use only

Bldg. 19213
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420225
Status: Excess
Comment: 1540 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19214
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420226
Status: Excess
Comment: 1796 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19215
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420227
Status: Excess
Comment: 1948 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19216
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420228
Status: Excess
Comment: 1540 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19217
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420229
Status: Excess
Comment: 120 sq. ft., most recent use—nav aids bldg., off-site use only

Bldg. 19218
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420230
Status: Excess
Comment: 2925 sq. ft., most recent use—general installation bldg., off-site use only

Bldgs. 19219, 19220
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420231
Status: Excess
Comment: 1200 sq. ft., most recent use—general installation bldg., off-site use only

Bldg. 19223
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420232
Status: Excess
Comment: 6433 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19225
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420233
Status: Excess
Comment: 4936 sq. ft., most recent use—dining facility, off-site use only

Bldg. 19226
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420234
Status: Excess
Comment: 136 sq. ft., most recent use—general purpose installation bldg., off-site use only

Bldg. T19228
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420235
Status: Excess
Comment: 400 sq. ft., most recent use—admin., off-site use only

Bldg. 19229
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420236
Status: Excess
Comment: 640 sq. ft., most recent use—vehicle shed, off-site use only

Bldg. 19232
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420237
Status: Excess
Comment: 96 sq. ft., most recent use—general purpose installation, off-site use only

Bldg. 19233
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420238
Status: Excess
Comment: 48 sq. ft., most recent use—fire support, off-site use only

Bldg. 19236
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420239
Status: Excess
Comment: 1617 sq. ft., most recent use—transient UPH, off-site use only

Bldg. 19238

Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200420240
Status: Excess
Comment: 738 sq. ft., off-site use only

Bldg. 01674
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200510056
Status: Unutilized
Comment: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01675
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200510057
Status: Unutilized
Comment: 5475 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01676
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200510058
Status: Unutilized
Comment: 7209 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01677
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200510059
Status: Unutilized
Comment: 5311 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 01678
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200510060
Status: Unutilized
Comment: 6488 sq. ft., needs rehab, most recent use—gen. inst., off-site use only

Bldg. 05887
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200510061
Status: Unutilized
Comment: 1344 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 01305
Hunter Army Airfield
Chatham Co: GA 31409–
Landholding Agency: Army
Property Number: 21200510063
Status: Excess
Comment: 400 sq. ft., most recent use—general purpose, off-site use only

Bldg. 00285
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200510064
Status: Excess
Comment: 6087 sq. ft., most recent use—police station, off-site use only

Bldg. 00051
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520087
Status: Excess
Comment: 3196 sq. ft., most recent use—court room, off-site use only

Bldg. 00052
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520088
Status: Excess
Comment: 1250 sq. ft., most recent use—admin., off-site use only

Bldg. 00053
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520089
Status: Excess
Comment: 2844 sq. ft., most recent use—admin., off-site use only

Bldg. 00054
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520090
Status: Excess
Comment: 4425 sq. ft., most recent use—admin., off-site use only

Bldg. 00451
Fort Stewart
Liberty Co: GA 31314–
Landholding Agency: Army
Property Number: 21200520091
Status: Excess
Comment: 2750 sq. ft., most recent use—exchange service, off-site use only

Bldg. 00106
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520092
Status: Unutilized
Comment: 3625 sq. ft., poor condition, most recent use—snack bar, off-site use only

Bldg. 02023
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520093
Status: Unutilized
Comment: 6138 sq. ft., poor condition, most recent use—Fh Sr NCO, off-site use only

Bldg. 2750
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520094
Status: Unutilized
Comment: 3707 sq. ft., poor condition, most recent use—health clinic, off-site use only

Bldg. 2819
Fort Benning
Chattachoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520095
Status: Unutilized
Comment: 40,442 sq. ft., poor condition, off-site use only

Bldg. 2843
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520096
Status: Unutilized
Comment: 9000 sq. ft., poor condition, most recent use—auto center, off-site use only

Bldg. 9013
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520099
Status: Unutilized
Comment: 40303 sq. ft., poor condition, most recent use—enlisted housing, off-site use only

5 Bldgs.
Fort Benning 9014, 9015, 9018, 9022, 9053
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520100
Status: Unutilized
Comment: 50620 sq. ft., poor condition, most recent use—enlisted housing, off-site use only

Bldg. 9050
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520104
Status: Unutilized
Comment: 9313 sq. ft., poor condition, most recent use—BDE HQ Bldg., off-site use only

Bldg. 9051
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520105
Status: Unutilized
Comment: 684 sq. ft., poor condition, most recent use—health clinic, off-site use only

Bldg. 09075
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520106
Status: Unutilized
Comment: 1500 sq. ft., poor condition, most recent use—BN HQ Bldg., off-site use only

Bldg. 9234
Fort Benning
Chattahoochee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520109
Status: Unutilized
Comment: 1200 sq. ft., poor condition, most recent use—exchange outlet, off-site use only

Bldgs. 10039, 10041
Fort Benning
Muscogee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520110
Status: Unutilized
Comment: 2375 sq. ft., poor condition, most recent use FH JR NCO/ENL, off-site use only

Bldg. 11326
Fort Benning
Muscogee Co: GA 31905–
Landholding Agency: Army
Property Number: 21200520112
Status: Unutilized
Comment: 9602 sq. ft., poor condition, most recent use—FH JR NCO/ENL, off-site use only

Indiana

Bldg. 301

Fort Benjamin Harrison
Indianapolis Co: Marion IN 45216–
Landholding Agency: Army
Property Number: 21200320098
Status: Unutilized
Comment: 1564 sq. ft., possible asbestos/lead paint, most recent use—storage shed, off-site use only

Bldg. 302
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320099
Status: Unutilized
Comment: 400 sq. ft., possible asbestos/lead paint, most recent use—switch station, off-site use only

Bldg. 303
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320100
Status: Unutilized
Comment: 462 sq. ft., possible asbestos/lead paint, most recent use—heat plant bldg., off-site use only

Bldg. 304
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320101
Status: Unutilized
Comment: 896 sq. ft., possible asbestos/lead paint, most recent use—heat plant bldg., off-site use only

Bldg. 334
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320102
Status: Unutilized
Comment: 652 sq. ft., possible asbestos/lead paint, off-site use only

Bldg. 337
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320103
Status: Unutilized
Comment: 675 sq. ft., possible asbestos/lead paint, off-site use only

Maryland

Bldg. 2282C
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230059
Status: Unutilized
Comment: 46 sq. ft., needs rehab, most recent use—sentry tower, off-site use only

Bldg. 8608
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410099
Status: Unutilized
Comment: 2372 sq. ft., concrete block, most recent use—PX exchange, off-site use only

Bldg. 8612
Fort George G. Meade
Ft. Meade MD 20755–5115
Landholding Agency: Army
Property Number: 21200410101
Status: Unutilized
Comment: 2372 sq. ft., concrete block, most recent use—family life ctr., off-site use only

Bldg. 0001A
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520114
Status: Unutilized
Comment: 9000 sq. ft., most recent use—storage

Bldg. 0001C
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520115
Status: Unutilized
Comment: 2904 sq. ft., most recent use—mess hall

Bldgs. 00032, 00H14, 00H24
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520116
Status: Unutilized
Comment: various sq. ft., most recent use—storage

Bldgs. 00034, 00H016
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520117
Status: Unutilized
Comment: 400/39 sq. ft., most recent use—storage

Bldgs. 00H10, 00H12
Federal Support Center
Olney Co: Montgomery MD 20882–
Landholding Agency: Army
Property Number: 21200520118
Status: Unutilized
Comment: 2160/469 sq. ft., most recent use—vehicle maintenance

Michigan

Bldg. 00001
Sheridan Hall USARC
501 Euclid Avenue
Helena Co: Lewis & Clark MI 59601–2865
Landholding Agency: Army
Property Number: 21200510066
Status: Unutilized
Comment: 19,321 sq. ft., most recent use—reserve center

Missouri

Bldg. 1230
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340087
Status: Unutilized
Comment: 9160 sq. ft., most recent use—training, off-site use only

Bldg. 1621
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200340088
Status: Unutilized
Comment: 2400 sq. ft., most recent use—exchange branch, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410102
Status: Unutilized
Comment: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410103
Status: Unutilized
Comment: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410104
Status: Unutilized
Comment: 120 sq. ft., most recent use—observation tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200410105
Status: Unutilized
Comment: 800 sq. ft., most recent use—range support, off-site use only

Bldg. 5760
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420059
Status: Unutilized
Comment: 2000 sq. ft., most recent use—classroom, off-site use only

Bldg. 5762
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420060
Status: Unutilized
Comment: 104 sq. ft., off-site use only

Bldg. 5763
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420061
Status: Unutilized
Comment: 120 sq. ft., most recent use—obs. tower, off-site use only

Bldg. 5765
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200420062
Status: Unutilized
Comment: 800 sq. ft., most recent use—support bldg., off-site use only

New York

Bldgs. 1511–1518
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–

Landholding Agency: Army
Property Number: 21200320160
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1523–1526
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320161
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1704–1705, 1721–1722
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320162
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldg. 1723
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320163
Status: Unutilized
Comment: 2400 sq. ft., needs rehab, most recent use—day room, off-site use only

Bldgs. 1706–1709
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320164
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1731–1735
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320165
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

North Carolina

Bldgs. A2245, A2345
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240084
Status: Excess
Comment: 3444 sq. ft. each, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comment: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comment: 8056 & 10,500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comment: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comment: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only

Bldg. 00241
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200430067
Status: Unutilized
Comment: 1008 sq. ft.

Bldgs. 00242–00244
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200430068
Status: Unutilized
Comment: 1008 sq. ft. each, most recent use—instruction bldg.

Bldgs. 00245–00247
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200430069
Status: Unutilized
Comment: 1008 sq. ft. each, most recent use—instruction bldg.

Bldgs. 00248–00249
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200430070
Status: Unutilized
Comment: 1008 sq. ft. each, most recent use—instruction bldg.

Bldgs. 00250–00252
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200430071
Status: Unutilized
Comment: 1008 sq. ft. each, most recent use—instruction bldg.

Bldgs. 00253–00254
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200430072
Status: Unutilized
Comment: 1008 sq. ft. each, most recent use—instruction bldg.

Bldg. 00255
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440077
Status: Excess
Comment: 528 sq. ft., possible asbestos, off-site use only

3 Bldgs.
Fort Hood
Bell Co: TX 76544–
Location: 00256, 00257, 00258
Landholding Agency: Army
Property Number: 21200440078
Status: Excess
Comment: 2504 sq. ft., possible asbestos, most recent use—classroom, off-site use only

Bldgs. 00259, 00267
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440079
Status: Excess
Comment: 288 & 168 sq. ft., possible asbestos, most recent use—lunch room, off-site use only

Bldgs. 00268–00269
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440080
Status: Excess
Comment: 2304 sq. ft., possible asbestos, most recent use—instruction, off-site use only

3 Bldgs.
Fort Hood
Bell Co: TX 76544–
Location: 00716, 00717, 00718
Landholding Agency: Army
Property Number: 21200440081
Status: Excess
Comment: 3200 sq. ft., possible asbestos, most recent use—hq. bldg., off-site use only

Bldg. 00720
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440082
Status: Excess
Comment: 3200 sq. ft., possible asbestos, most recent use—shipping, off-site use only

Bldg. 00722
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440083
Status: Excess
Comment: 2665 sq. ft., possible asbestos, most recent use—dining, off-site use only

Bldg. 00728
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440084
Status: Excess
Comment: 2400 sq. ft., possible asbestos, most recent use—hq. bldg., off-site use only

Bldg. 00729
Fort Hood

Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440085
Status: Excess
Comment: 2400 sq. ft., possible asbestos, most recent use—auto aide, off-site use only

Bldgs. 01121, 01156
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440086
Status: Excess
Comment: 6728, 7020 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04220
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440087
Status: Excess
Comment: 12,427 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldgs. 04223–04226
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440088
Status: Excess
Comment: 9000 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04280
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440089
Status: Excess
Comment: 96 sq. ft., possible asbestos, most recent use—scale house, off-site use only

Bldg. 04335
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440090
Status: Excess
Comment: 3378 sq. ft., possible asbestos, most recent use—general, off-site use only

6 Bldgs.
Fort Hood
Bell Co: TX 76544–
Location: 0441, 04412, 04413, 04414, 04418, 04432
Landholding Agency: Army
Property Number: 21200440091
Status: Excess
Comment: various sq. ft., possible asbestos, most recent use—hq. bldg., off-site use only

Bldg. 04450
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440092
Status: Excess
Comment: 5310 sq. ft., possible asbestos, most recent use—general, off-site use only

3 Bldgs.
Fort Hood
Bell Co: TX 76544–
Location: 04452, 04456, 04457
Landholding Agency: Army
Property Number: 21200440093
Status: Excess
Comment: 5310 sq. ft., possible asbestos, most recent use—hq. bldg., off-site use only

Bldg. 04465
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440094
Status: Excess
Comment: 5310 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldgs. 04466–04467
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440095
Status: Excess
Comment: 5310 sq. ft., possible asbestos, most recent use—hq. bldg., off-site use only

Bldg. 04468
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440096
Status: Excess
Comment: 3100 sq. ft., possible asbestos, most recent use—misc., off-site use only

Bldg. 04473
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440097
Status: Excess
Comment: 3100 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldgs. 04475–04476
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440098
Status: Excess
Comment: 3241 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 04477
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440099
Status: Excess
Comment: 3100 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldg. 07002
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440100
Status: Excess
Comment: 2598 sq. ft., possible asbestos, most recent use—fire station, off-site use only

Bldg. 7002A
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440101
Status: Excess
Comment: 73 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldgs. 31007, 31009
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440102
Status: Excess
Comment: 139,693 sq. ft., possible asbestos, most recent use—barracks/operations, off-site use only

Bldg. 31008
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440103
Status: Excess
Comment: 17,936 sq. ft., possible asbestos, most recent use—dining, off-site use only

Bldg. 31011
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440104
Status: Excess
Comment: 23624 sq. ft., possible asbestos, most recent use—hq. bldg., off-site use only

Bldg. 57001
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440105
Status: Excess
Comment: 53,024 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldgs. 90039–90040
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440106
Status: Excess
Comment: 13,124 sq. ft., possible asbestos, most recent use—general, off-site use only

Bldgs. 90053–90054
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200440107
Status: Excess
Comment: 884 & 206 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldg. 00127
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200520120
Status: Excess
Comment: 3753 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 00131
Fort Hood
Bell Co: TX 76544–
Landholding Agency: Army
Property Number: 21200520121
Status: Excess
Comment: 2250 sq. ft., most recent use—admin., off-site use only

Virginia

Bldg. T2827
Fort Pickett
Blackstone Co: Nottoway VA 23824—
Landholding Agency: Army
Property Number: 21200320172
Status: Unutilized
Comment: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army

Property Number: 21200320173
Status: Unutilized
Comment: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Washington

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comment: 82 sq. ft., most recent use—guard shack, off-site use only

Unsuitable Properties

Buildings (by State)

Alabama

68 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898
Landholding Agency: Army
Property Number: 21200040001–21200040012, 21200120018, 21200220003–21200220004, 21200240007–21200240022, 21200330001–2120330004, 21200340011, 21200340095, 21200420068–21200420071, 21200440001, 21200520002
Status: Unutilized
Reason: Secured area; Extensive deterioration

6 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219740006, 21200040013, 21200240003, 21200420073, 21200430006, 21200440005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01271
Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 21200430004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00209
Anniston Army Depot
Calhoun AL 36201–4199
Landholding Agency: Army
Property Number: 21200520001
Status: Unutilized
Reason: Extensive deterioration

Alaska

19 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002, 219810007, 21199920001, 21200340007–21200340010, 21200430001–21200430003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Floodway (Some are extensively deteriorated)

11 Bldgs., Fort Richardson
Ft. Richardson Co: AK 99505
Landholding Agency: Army
Property Number: 21200340001–21200340006
Status: Excess
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location:
12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273, 219120177–219120181
Status: Unutilized
Reason: Secured area

77 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140006–21200140010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured area (Most are extensively deteriorated)

Bldgs. 15348, 15344
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613
Landholding Agencuy: Army
Property Number: 21200240024, 21200330005
Status: Excess
Reason: Extensive deterioration

Arkansas

190 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200110001–21200110017, 21200140011–21200140014, 21200530001
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area

12 Bldgs.
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446, 21200530003
Status: Underutilized
Reason: Secured area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured area

40 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030, 21200330007
Status: Unutilized
Reason: Secured area

61 Bldgs.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040, 21200530002
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015 21199920033–21199920036, 21199940052–21199940056
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area

450 Bldgs., Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235, 21200530004
Status: Excess
Reason: Secured area; Extensive deterioration

27 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051, 21200130005
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured area; Extensive deterioration

Bldgs. 00635, 00796
Parks Reserve Forces
Dublin Co: Alameda CA 94568
Landholding Agency: Army
Property Number: 21200520003
Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material; Secured area; Extensive deterioration

9 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830024, 21200130006–21200130009, 21200420161–21200420164
Status: Unutilized
Reason: Extensive deterioration (Some are within 2000 ft. of flammable or explosive material)

5 Bldgs.
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021, 21200420165–21200420166
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Bldg. 986
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640022
Status: Unutilized
Reason: Extensive deterioration

40 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219610320, 219720017–219720019, 219810028, 219810030, 219810035, 219830073, 21199930034, 21200030026, 21200330008–21200330010, 21200410001–21200410009, 21200430011–21200430016, 21200440009, 21200510003, 21200530005
Status: Unutilized
Reason: Extensive deterioration

32 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21200140016, 21200220011–21200220012,21200230005, 21200340013–21200340016, 21200420074–21200420082
Status: Unutilized
Reason: Extensive deterioration; Secured area

Bldg. P8121, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060
Status: Unutilized
Reason: Extensive Deterioration

2 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219830068, 21200430062
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004, 21200520004
Status: Unutilized
Reason: Secured area

Hawaii

16 Bldgs.
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837, 219030361, 21200410012
Status: Unutilized
Reason: Secured area; (Most are extensively deteriorated)

Bldgs. 00001 thru 00051
Kipapa Ammo Storage Site
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 21200520006
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00802, 01005, 01500 thru 01503
Wheeler Army Airfield
Honolulu Co: HI 96786
Landholding Agency: Army
Property Number: 2120052007–21200520008
Status: Unutilized
Reason: Extensive deterioration

130 Tunnels
Aliamanu
Honolulu Co: HI 96818
Landholding Agency: Army
Property Number: 21200440015–21200440017
Status: Unutilized
Reason: contamination

Illinois

5 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110106, 219620428, 21200140043–21200140044, 21200530006
Status: Unutilized
Reason: Some are in a secured area; Some are extensively deteriorated; Some are within 2000 ft. of flammable or explosive material

15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured area, Floodway; Extensive deterioration

Bldgs. 111, 145
Col. Schulstad Memorial USARC
Arlington Heights Co: Cook IL 60005
Landholding Agency: Army
Property Number: 21200320012
Status: Unutilized
Reason: Extensive deterioration

Indiana

130 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079–219530096, 219740021–219740026, 219820031–219820032, 21199920063, 21200330015–21200330016, 21200440019
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 300, 00112, 00123
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Landholding Agency: Army
Property Number: 21200320011, 21200430017
Status: Unutilized
Reason: Contamination

Iowa

118 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219740027, 21200220022, 21200230019–21200230023, 21200330012–21200330014, 21200340017, 21200420083, 21200430018, 21200440018, 21200510004–21200510006, 21200520009
Status: Unutilized
Reason: (Many are in a Secured Area); (Most are within 2000 ft. of flammable or explosive material.)

27 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured area; (Most are within 2000 ft. of flammable or explosive material)

121 Bldgs.
Kansas Army Ammunition Plant
Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured area

Bldg. 00166
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200310007
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. 126

Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured area; Sewage treatment facility

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant

32 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200130028–21200130029, 21200440025–21200440026, 21200510007–21200510009
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110038–21200110043, 21200140053, 21200220029, 21200330018, 21200420088, 21200520012–21200520015, 21200530007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00023
Blue Grass Army Depot
Richmond Co: Madison KY 40475
Landholding Agency: Army
Property Number: 21200520011
Status: Unutilized
Reason: Secured area

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured area; (Most are within 2000 ft. of flammable or explosive material); (Some are extensively deteriorated)

42 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21200130030–21200130043, 21200530008–21200530017
Status: Unutilized
Reason: Extensive deterioration; (Some are in Floodway)

Maryland

90 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219012610, 219012638–219012642, 219012658–219012662, 219014711, 219610489–219610490, 219730077, 219810076–219810112, 219820090–219820096, 21200120059–21200120060, 21200410017–21200410032, 21200420097–21200420103, 21200440027–21200440030, 21200510011–21200510013, 21200520021, 21200520072–21200520073
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material); (Some are in a floodway); (Some are extensively deteriorated)

63 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219810065, 21199910019, 21200140059–21200140060, 21200240046–21200240051, 21200410014–21200410016, 21200510017–21200510019, 21200520016–21200520020
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00211, Curtis Bay Ordnance Depot
Baltimore Co: MD 21226
Landholding Agency: Army
Property Number: 21200320024
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort Detrick
Frederick Co: MD 21702
Landholding Agency: Army
Property Number: 21200430019–21200430020, 21200510014–21200510016
Status: Unutilized
Reason: Secured area

Bldg. 0001B
Federal Support Center
Olney Co: Montgomery MD 20882
Landholding Agency: Army
Property Number: 21200530018
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured area; Extensive deterioration

Bldg. 1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219310020
Status: Unutilized
Reason: Secured area

Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Devens RFTA
Devens Co: MA 01432–4429
Landholding Agency: Army
Property Number: 21200340019–21200340021
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fera USARC
Danvers Co: Essex MA 01923–1121
Landholding Agency: Army
Property Number: 21200420089–21200420092
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured area
Extensive deterioration

31 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062, 21200410036–21200410042
Status: Unutilized
Reason: Extensive deterioration.

39 Bldgs.
US Army Garrison-Selfridge
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200420093, 21200510020–21200510023
Status: Unutilized
Reason: Secured area

4 Bldgs.
Poxin USAR Center
Southfield Co: Oakland MI 48034
Landholding Agency: Army
Property Number: 21200330026–21200330027, 21200420095
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs.
Grayling Army Airfield
Grayling Co: Crawford MI 49739
Landholding Agency: Army
Property Number: 21200410034–21200410035
Status: Excess
Reason: Extensive deterioration

Bldg. 001, Crabble USARC
Saginaw MI 48601–4099
Landholding Agency:Army
Property Number: 21200420094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00714
Selfridge Air Natl Guard Base
Macomb Co: MI 48045
Landholding Agency: Army
Property Number: 21200440032
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Detroit Arsenal
T0209, T0216, T0246, T0247
Warren Co: Macomb MI 88397–5000
Landholding Agency: Army
Property Number: 21200520022
Status: Unutilized
Reason: Secured area

Minnesota

160 Bldgs.

Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198– 219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured area; (Most are within 2000 ft. of flammable or explosive material.); (Some are extensively deteriorated)

Missouri

83 Bldgs., Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134, 219530136, 21199910023–21199910035, 21199920082, 21200030049
Status: Unutilized
Reason: Secured area; (Some are within 2000 ft. of flammable or explosive material)

9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured area; (Some are extensively deteriorated)

22 Bldgs., Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430075, 21199910020–21199910021, 21200320025, 21200330028–21200330031, 21200430029, 21200530019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated)

Bldg. P4122, U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P4074, P4072, P4073
St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310019
Status: Unutilized
Reason: Extensive deterioration

Montana

Bldg. P0516, Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200420104
Status: Excess
Reasons: Secured area; Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured area

39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643,
Status: Underutilized
Reason: Secured area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)

Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area

New Jersey

173 Bldgs., Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 00219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740113–219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230072-21200230075, 21200330047–21200330063, 21200410043–21200410044, 21200520024–21200520039, 21200530022–21200530028
Status: Excess
Reason: Secured area; (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated and in a floodway)

7 Bldgs., Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200430030, 21200440033, 21200510025–21200510027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4404, Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200530020
Status: Unutilized
Reason: Extensive deterioration

New Mexico

164 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002
Landholding Agency: Army
Property Number: 21200410045–21200410049, 21200440034–21200440045
Status: Excess
Reason: Secured area

New York

Bldg. 12, Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099
Status: Unutilized
Reason: Extensive deterioration; Secured area

13 Bldgs., Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1716, 3014, 3018 U.S. Military Academy
West Point Co: NY 10996
Landholding Agency: Army
Property Number: 21200330064, 21200410050, 21200520040
Status: Unutilized
Reason: Extensive deterioration

66 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602
Landholding Agency: Army
Property Number: 21200340027–21200340029, 21200410051, 21200420112–21200420128, 21200440046, 21200520041–21200520047, 21200530021
Status: Unutilized
Reason: Extensive deterioration

Bldg. 108, Fredrick J ILL, Jr. USARC
Bullville Co: Orange NY 10915–0277
Landholding Agency: Army
Property Number: 21200510028
Status: Unutilized
Reason: Secured area

Bldgs. 107, 112, 113
Kerry P. Hein USARC NY058
Shoreham Co: Suffolk NY 11778–9999
Landholding Agency: Army
Property Number: 21200510054
Status: Excess
Reason: Secured area

North Carolina

193 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219640074, 219710102–219710111, 219710224, 219810167, 21200040035, 21200140064, 21200340031–21200340045, 21200410056, 21200420130, 21200430042, 21200440047–21200440051, 21200530029–21200530049
Status: Unutilized
Reason: Extensive deterioration

3 Bldgs., Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219810158–219810160, 21200330032
Status: Unutilized
Reason: Secured area

North Dakota

Bldgs. 440, 455, 456, 3101, 3110
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

186 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199840069–21199840104, 21200240064, 21200420131–21200420132, 21200530051–21200530052

Status: Unutilized
Reason: Secured area

7 Bldgs., Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured area

Bldgs. T92, T93, T94, Defense Supply Center
Columbus Co: Franklin OH 43216
Landholding Agency: Army
Property Number: 21200530050
Status: Unutilized
Reasons: Secured area; Extensive deterioration

Oklahoma

26 Bldgs., Fort Sill
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219510023, 21200330065, 21200430043, 21200530053–21200530060
Status: Unutilized
Reason: Extensive deterioration

Bldgs. MA050, MA070, Regional Training Institute
Oklahoma City Co: OK 73111
Landholding Agency: Army
Property Number: 21200440052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. GRM03, GRM24, GRM26, GRM34
Camp Gruber Training Site
Braggs Co: OK 74423
Landholding Agency: Army
Property Number: 21200510029–21200510032
Status: Unutilized
Reason: Extensive deterioration

22 Bldgs., McAlester Army Ammo Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 21200510033–21200510039, 21200520048
Status: Excess
Reason: Secured area

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012191, 219012197– 219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured area

34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838-
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured area

Pennsylvania

23 Bldgs., Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219810183–219810190
Status: Unutilized
Reason: Extensive deterioration

2 Bldgs.
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 21200430044, 21200510041
Status: Unutilized
Reason: Secured area (Some are extensively deteriorated)

8 Bldgs., Tobyhanna Army Depot
Tobyhanna Co: Monroe PA 18466
Landholding Agency: Army
Property Number: 21200330068, 21200440053–21200440054, 21200510040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01003, C.E. Kelly Support Facility
Neville Island Co: Allegheny PA 15225
Landholding Agency: Army
Property Number: 21200330069
Status: Unutilized
Reason: Extensive deterioration

28 Bldgs.
Letterkenny Army Deport
Chambersburg Co: Franklin PA 17201
Landholding Agency: Army
Property Number: 21200420134–21200420144, 21200430045–21200430051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured area; Extensive deterioration

Bldgs. 00014, 00033, 00044
CE Kelly Support Facility
Oakdale Co: Allegheny PA 15071
Landholding Agency: Army
Property Number: 21200420153–21200420155
Status: Unutilized
Reason: Secured area

5 Bldgs., Carlisle Barracks
Cumberland Co: PA 17013
Landholding Agency: Army
Property Number: 21200440055–21200440056, 21200520049
Status: Excess
Reason: Extensive deterioration

Puerto Rico

128 Bldgs., Fort Buchanan
Guaynabo Co: PR 00934
Landholding Agency: Army
Property Number: 21200330077–21200330092, 21200340052–21200340055, 21200420156–21200420160, 21200530061–21200530063
Status: Unutilized
Reason: Secured area (Some are extensively deteriorated)

South Carolina

41 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157, 21200520050
Status: Unutilized
Reason: Extensive deterioration

Tennessee

79 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219140613, 219440212–219440216, 219510025–219510027, 21200230035, 21200310040, 21200320054–21200320073, 21200340056, 21200510042, 21200530064–21200530065
Status: Unutilized
Reason: Secured area (Some are within 2000 ft. of flammable or explosive material)

47 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 21200440059–21200440061, 21200520051–21200520052
Status: Unutilized
Reason: Secured area (Some are extensively deteriorated)

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

68 Bldgs.
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200220023, 21200240065, 21200330094–21200330100, 21200430052–2100430054, 21200440057–21200440058, 21200510043, 21200520053–21200520062
Status: Unutilized
Reason: Extensive deterioration

Texas

20 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area

154 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219620827, 21200340062–21200340073
Status: Unutilized
Reason: Secured area (Most are within 2000 ft. of flammable or explosive material)

16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000

Landholding Agency: Army
Property Number: 219420315–219420327, 219430095–219430097
Status: Unutilized
Reason: Secured area; (Some are extensively deteriorated)

85 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044, 21200320079, 21200340059
Status: Unutilized
Reason: Extensive deterioration

8 Bldgs., Grand Prairie Reserve Complex
Grand Prairie Co: Tarrant TX 75050
Landholding Agency: Army
Property Number: 21200330101–21200330103, 21200340061, 21200420152
Status: Unutilized
Reason: Secured area

6 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 21200420146–21200420147
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 05110, 06088, Fort Sam Houston
Camp Bullis Co: Bexar TX
Landholding Agency: Army
Property Number: 21200520063
Status: Excess
Reason: Extensive deterioration

Utah

26 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012166, 219012751, 21200440063–21200440065
Status: Unutilized
Reason: Secured area

Bldg. 9307
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997
Status: Underutilized
Reason: Secured area

Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured area; Extensive deterioration

Bldgs. 00259, 00206
Ogden Maintenance Center
Weber Co: UT 84404
Landholding Agency: Army
Property Number: 21200530066
Status: Excess
Reason: Secured area

Virginia

348 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633, 219220210–219220218, 219230100–219230103, 219240324, 219440219–219440225, 219510031–219510033, 219520037, 219520052, 219530194, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230038, 21200240071–21200240072, 21200510045–21200510046
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; (Some are extensively deteriorated)

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Latrine, detached structure

38 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210, 219330225–219330228, 219610597, 219620866–219620876, 219630115, 219740156, 219830208–219830210, 21199940130, 21200110064, 21200340074, 21200430058–21200430060, 21200510050, 21200520064–21200520065
Status: Unutilized
Reason: Extensive deterioration; (Some are in a secured area)

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area

84 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200310058–21200310060, 21200410068–21200410077, 21200430057, 21200510051
Status: Unutilized
Reason: Secured area; Extensive deterioration

13 Bldgs.
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910051, 21199920107, 21199940117–21199940120, 21200030063–21200030064, 21200130075–21200130077, 21200530071
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200210025–21200210026
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 448, 501
Fort Myer
Ft. Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 21200010069, 21200510044
Status: Underutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Monroe
Ft. Monroe Co: VA 23651
Landholding Agency: Army
Property Number: 21200410067, 21200430056, 21200510047–21200510049
Status: Excess
Reason: Extensive deterioration

51 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092, 21200320080–21200320087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00723
Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Defense Supply Center 00021, S0096, 00185, 00715, 00716
Richmond Co: Chesterfield VA 23297
Landholding Agency: Army
Property Number: 21200530067–21200530070
Status: Unutilized
Reason: Secured area

Washington

663 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910064–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097, 21200330104–21200330106, 21200430061
Status: Unutilized
Reason: Secured area; Extensive deterioration

Bldg. HBC07
Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415
Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army

Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: Gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Renton USARC
Renton Co: WA 980058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured area

153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 19011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area); (Most are within 2000 ft. of flammable or explosive material); (Some are extensively deteriorated)

Land (by State)

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured area

15 acres, Fort Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200440031
Status: Unutilized
Reason: Secured area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured area

[FR Doc. 05–16714 Filed 8–25–05; 8:45 am]

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Federal Register

Friday,
August 26, 2005

Part VII

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 410

Medicare Program; Conditions for Payment of Power Mobility Devices, Including Power Wheelchairs and Power-Operated Vehicles; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 410

[CMS–3017–IFC]

RIN 0938–AM74

Medicare Program; Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule conforms our regulations to section 302(a)(2)(E)(iv) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173). This rule defines the term power mobility devices (PMDs) as power wheelchairs and power operated vehicles (POVs or scooters). It sets forth revised conditions for Medicare payment of PMDs and defines who may prescribe PMDs. This rule also requires a face-to-face examination of the beneficiary by the physician or treating practitioner and a PMD prescription and pertinent parts of the medical record that the durable medical equipment supplier maintains in records and makes available to CMS or its agents upon request. Finally, this rule discusses CMS' policy on documentation that may be requested by CMS or its agents to support a Medicare claim for payment, as well as the elimination of the Certificate of Medical Necessity for PMDs.

DATES: Effective date: These regulations are effective on October 25, 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 25, 2005.

ADDRESSES: In commenting, please refer to file code CMS–3017–IFC. 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/regulations/ecomments* (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–3017–IFC, P.O. Box 8013, 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–3017–IFC, 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: Karen Daily, (410) 786–0189.

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–3017–IFC 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 electronic comments received before the close of the comment period on our public web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

Sections 1832(a)(1) and 1861(s)(6) of the Act establish that the provision of durable medical equipment is a covered benefit under Part B of the Medicare program. Section 1834(a)(1)(A) provides that Medicare will pay for covered items defined in section 1834(a)(13) which, in turn, defines the term ''covered item'' to include durable medical equipment (DME) defined in section 1861(n). Section 1861(n) provides that DME includes wheelchairs, including power-operated vehicles that may appropriately be used as wheelchairs, that are necessary based on the beneficiary's medical and physical condition, meet safety requirements prescribed by the Secretary, and are used in the beneficiary's home, including an institution used as the beneficiary's home other than a hospital described in section 1861(e)(1) or a skilled nursing facility described in section 1819(a)(1). Section 414.202 of our regulations further defines DME as equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury, and is appropriate for use in the home. We have interpreted the term wheelchair to include both power wheelchairs and power-operated vehicles (POVs or scooters), and we collectively refer to

power wheelchairs and power-operated vehicles as power mobility devices (PMDs).

When POVs were first introduced, we were concerned about their stability and the danger they could pose to a Medicare beneficiary. Therefore, we issued a regulation (57 FR 57688) allowing only specialists in physical medicine, orthopedic surgery, neurology, and rheumatology to prescribe POVs. At that time, we believed that these specialists were the most qualified to perform the required evaluation to determine whether a POV was medically necessary and whether the beneficiary had the capacity to operate the POV safely and effectively. At the same time, beneficiaries were able to get a prescription for a power wheelchair without seeing a specialist. We did not issue a similar regulation for power wheelchairs because we did not harbor the same concerns about their safety.

Our requirement that only certain specialists could prescribe a POV may have created a disincentive for qualified beneficiaries to obtain POVs. Many beneficiaries may not have realized that under an exception to this requirement set forth in § 410.38(c)(4), they could obtain a prescription from their physician if a specialist was not reasonably accessible. For example, if travel to the specialist would be more than one day's round trip from the beneficiary's home or if the beneficiary's medical condition precluded travel to the nearest available specialist, we stated that these circumstances would satisfy the ''not reasonably accessible'' requirement. We allowed this exception under the current regulation because it addressed the needs of beneficiaries who lived in rural or other areas with limited access, or who were physically unable to see a specialist.

However, since POVs were first introduced the technology has improved. For example, the POV now has an improved turning radius that gives it greater stability and makes it easier to use. Given that these technological advancements have made many POVs safer to use, a specialist assessment of the beneficiary's capacity to operate a POV, while recommended, is no longer required.

In addition, CMS and the Office of the Inspector General (OIG) have identified inflated and falsified billings as a serious problem among certain DME suppliers. Medicare payments for power wheelchairs have increased approximately 350 percent from 1999 to 2003 (from $259 million in 1999 to approximately $1.2 billion for 2003), while overall Medicare program outlays have risen approximately 28 percent.

In an effort to address fraud and abuse, Medicare contractors have always had the authority to review claims and additional documentation to determine if services provided were reasonable and necessary in accordance with section 1862(A)(1)(a).

Section 302(a)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108–173 (MMA), added section 1834(a)(1)(E)(iv) to the Act, which provides that payment may not be made for a covered item consisting of a motorized or power wheelchair unless a physician (as defined in section 1861(r)(1) of the Act), or a physician assistant, nurse practitioner, or clinical nurse specialist (as those terms are defined in section 1861(aa)(5) of the Act) has conducted a face-to-face examination of the beneficiary and written a prescription for the item. This regulation is intended to implement section 1834(a)(1)(E)(iv) of the Act.

Payment for the history and physical examination will be made through the appropriate evaluation and management (E&M) code corresponding to the history and physical examination of the patient. Due to the MMA requirement that the physician or treating practitioner create a written prescription and this regulation's requirement that the physician or treating practitioner prepare pertinent parts of the medical record for submission to the DME supplier, we will establish an add-on G Code (used in addition to an E&M code for the examination) to recognize the additional physician work and resources required to establish and document the need for the PMD. We believe that the typical amount of additional physician work and resources involved is equivalent to the physician fee schedule relative values established for a level 1 office visit for an established patient (CPT 99211). The payment amount for such a visit is $21.60; therefore, the payment amount for this new G code for 2005 will be $21.60, adjusted by the geographic area where the service is provided, and based on the physician fee schedule relative values for a level 1 established office visit (CPT 99211). This change to the physician fee schedule will be effective with this rule.

II. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption ''Provisions of the Interim Final Rule'' at the beginning of your comments.]

We are revising § 410.38(c) of our regulations to specify the following:

- The definition of a ''power mobility device (PMD)''. We are defining PMDs as a subclass of wheelchairs that includes both power wheelchairs and power-operated vehicles that a beneficiary uses in the home.
- The definition of a ''physician'' and a ''treating practitioner''. As directed by section 1834(a)(1)(E)(iv), we are defining the term ''physician'' in accordance with section 1861(r)(1) of the Act. We are defining the term ''treating practitioner'' to mean a physician assistant, nurse practitioner, and clinical nurse specialist, as those terms are defined by section 1861(aa)(5) of the Act. We are using the term ''treating'' to further explain that the practitioner must be the one who has conducted the face-to-face examination of the beneficiary. We believe that the removal of restrictions regarding who can prescribe POVs will increase a beneficiary's access to the PMD that is most appropriate for the beneficiary's condition. Currently, physicians (other than the specialists currently described in section 410.38) and other treating practitioners cannot prescribe POVs and are limited to prescribing power wheelchairs.
- The definition of ''supplier.'' We are defining the term supplier for the purposes of this rule as a durable medical equipment (DME) supplier.
- The physician or treating practitioner must conduct a face-to-face examination of the beneficiary and write a PMD prescription.
- The PMD prescription must be in writing and signed and dated by the physician or treating practitioner who performed the face-to-face examination and received by the supplier within 30 days after the face-to-face examination. We are defining the term ''prescription'' as a written order that must include the beneficiary's name, the date of the face-to-face examination, the diagnoses and conditions that the PMD is expected to modify, a description of the item (for example, a narrative description of the specific type of PMD), the length of need, the physician or treating practitioner's signature and the date the prescription is written.
- A beneficiary discharged from a hospital does not need to have a separate face-to-face examination if the physician or treating practitioner who performed the face-to-face examination during his or her hospital stay issues the written prescription and supporting documentation for the PMD and they are received by the supplier within 30 days after the date of discharge.

• The face-to-face examination requirement does not apply when only accessories for PMDs are being ordered.

• In addition to the prescription for the PMD, the physician or treating practitioner must provide to the supplier supporting documentation which will include pertinent parts of the medical record that clearly support the medical necessity for the PMD in the beneficiary's home. Pertinent parts from the documentation of the beneficiary's PMD evaluation may include the history, physical examination, diagnostic tests, summary of findings, diagnoses, and treatment plans. The physician or treating practitioner should select only those parts of the medical record that clearly demonstrate medical necessity for the PMD. The parts of the medical record selected should be sufficient to delineate the history of events that led to the request for the PMD; identify the mobility deficits to be corrected by the PMD; and document that other treatments do not obviate the need for the PMD, that the beneficiary lives in an environment that supports the use of the PMD and that the beneficiary or caregiver is capable of operating the PMD. In most cases, the information recorded at the face-to-face examination will be sufficient. However, there may be some cases where the physician or treating practitioner has treated a patient for an extended period of time and the information recorded at the face-to-face examination refers to previous notes in the medical record. In this instance, those previous notes would also be needed.

An example (not all inclusive) of the pertinent parts of the medical record would be beneficiary X recently sustained traumatic amputation of his right leg below the knee and his right arm below the elbow as a result of an automobile accident. He also sustained significant lacerations to his left foot, which is extensively scarred. Prior to the trauma, beneficiary X had been an active retiree. Lacking sufficient ambulation to move about his home, patient X has used a bedside commode and is dependent on others to bring food to his bedroom. He is eager to regain independent mobility, and requests a PMD during a follow-up examination with his treating physician. Based on his knowledge of the beneficiary's prior medical history and his assessment of the beneficiary's current condition, using his clinical judgment the physician decides to prescribe a power wheelchair. The physician's knowledge of the provisions of the Mobility Assistive Equipment (MAE) National Coverage Decision (NCD) (available at *http://www.cms.hhs.gov/manuals/pm_trans/R37NCD.pdf*) informs his discussion of available options with the beneficiary. The physician believes that the beneficiary would not be able to safely operate a POV. The physician writes a prescription with the required information including the description of the device (*i.e.*, a power wheelchair). The Subjective section of the physician's progress note for the face-to-face examination summarizes the history of the automobile accident, subsequent hospitalization and surgical revision and closure of the amputation stumps. The patient's request of the device is also mentioned. In the Objective findings, the physician notes the beneficiary's general appearance and the absence of the amputated arm and leg. The function of the remaining extremities is noted, including movement and strength in the remaining left arm and left leg. The Assessment includes the physician's determination that the beneficiary cannot ambulate sufficiently to get beyond his bedroom, and that mobility devices other than a power wheelchair are not sufficient to correct the deficit, and the Plan indicates the prescription of a power wheelchair, with a notation that the beneficiary's home environment does not prevent the appropriate use of the device. Believing the progress notes sufficiently present the rationale for prescription of the device, the physician instructs the office staff to send a copy of the progress notes along with the prescription to the supplier.

Another example (not all inclusive) of the pertinent parts of the medical record would be beneficiary Y lives in a small rural town. He developed heart failure after a myocardial infarction earlier in the year, for which he had been transported by air to the state's university medical center 75 miles away. His medical history also includes hypertension, mild osteoarthritis, and gastroesophageal reflux. He is treated medically for his cardiac condition by his cardiologist at the university medical center. He sees his primary care physician in town for his other medical conditions. The cardiologist maintains good contact with the primary care physician, routinely sharing copies of his test results and chart notes. Over the past few months, beneficiary Y has complained progressively of difficulty walking due to fatigue. The cardiologist is aware of this and has adjusted his medications accordingly and added home oxygen to his regimen. The beneficiary phones his primary care physician, who he last saw two months ago, with a request for a POV.

Beneficiary Y's primary physician schedules a home visit to examine him after office hours. He notes that the home is a one story rambler and that the halls and doorways are wide enough to allow the use of a POV. The beneficiary's physical examination findings at rest are consistent with his heart failure diagnosis, but do not seem severe enough to prevent the beneficiary from walking short distances in his home. The physician knows from experience that the severity of the symptoms and signs of heart failure can vary over the course of the day and with exertion. The physician asks the beneficiary to stand and walk from the bedroom to the dining room, a distance of 20 feet. The beneficiary stops after a few steps, saying he needs to catch his breath. Patient Y continues to walk slowly, but manages to get to the dining room after about a minute. Based on his knowledge of the beneficiary's prior medical history and his assessment of the beneficiary's current condition, the physician decides that the beneficiary needs a PMD and that other mobility devices are not sufficient to correct his mobility deficits to perform mobility related activities of daily living in his home. The physician's knowledge of the provisions of the Mobility Assistive Equipment (MAE) NCD informs his discussion of available options with the beneficiary. The physician believes that the patient has adequate strength and stability to safely operate a POV.

The Subjective section of the physician's progress note for the home visit briefly notes the history of cardiac disease, and refers to the cardiologist's notes for more details. The beneficiary's request for the device is also mentioned. In the Objective findings, the physician notes the beneficiary's general appearance and the physical examination findings including the patient's attempt to walk to the dining room. Basic information about the beneficiary's home setting is also included. The Assessment includes the physician's determination that the patient cannot ambulate adequately, and that his cardiac symptoms are worsened by the exertion of ambulation. The Plan indicates the prescription of a POV with a notation that the beneficiary's home environment does not prevent the appropriate use of the device. Believing that the progress note alone does not sufficiently present the rationale for the prescription of the device, the physician instructs the office staff to send the prescription and additional records to the supplier, including copies of the cardiologist's notes, echocardiogram

and cardiac stress test results, and arterial blood gas results.

• Physicians, treating practitioners, and suppliers must comply with all applicable Federal laws and regulations, including the HIPAA Privacy Rule. Any physician, treating practitioner or supplier that is a HIPAA covered entity must meet the relevant HIPAA Privacy Rule requirements, including the minimum necessary standard, when disclosing the supporting documentation and requested additional information. The physician, treating practitioner or supplier that is a HIPAA covered entity should make sure to redact any materials that may be contained within the medical record that are not necessary to support the prescription. For example, a gynecologic report would not be needed in the records submitted for a beneficiary whose clinical need for a PMD is based solely on disability secondary to a stroke.

• The supplier must obtain the prescription and supporting documentation prior to dispensing the PMD.

• Upon request, suppliers must submit to CMS or its agents the PMD prescription and supporting documentation that they received from the physician or treating practitioner.

• Upon request, suppliers must submit additional documentation if the PMD prescription and supporting documentation are not sufficient to determine that the PMD is reasonable and necessary. Additional documentation may include physician office records, hospital records, nursing home records, home health agency records, records from other healthcare professionals, and test reports. This documentation does not need to be submitted with every claim, but must be made available to CMS or its agent upon request.

• The PMD must meet any safety requirements specified by CMS.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority, under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, or contrary to the public interest, and if the agency incorporates a statement of this finding and supporting reasons in the rule issued.

Since this change conforms our regulations to section 1834(a)(1)(E)(iv) of the Act, we believe it would be contrary to the public interest to delay implementing this beneficiary relief pending notice-and-comment procedure. The Congress has prohibited Medicare from paying for covered items consisting of motorized or power wheelchairs unless a physician (as defined in section 1861(r)(1)), a physician assistant, nurse practitioner, or a clinical nurse specialist (as those terms are defined in section 1861(aa)(5)) conducts a face-to-face examination of the beneficiary and writes a prescription for the item. We believe that the face-to-face examination and prescription requirements are mandated by section 302(a)(2)(E)(iv) of the MMA and involve little exercise of agency discretion. Therefore, we believe that notice and comment procedure are unnecessary with respect to these provisions. In addition, this rule removes a current regulatory restriction that limits POV prescribing to certain specialists. We believe that this limitation is inconsistent with the MMA, which expressly allows a physician, physician assistant, nurse practitioner or a clinical nurse specialist to prescribe a PMD, and we believe that removing this limitation will increase beneficiary access to the appropriate PMD for his or her medical condition. Moreover, because CMS and the OIG have concluded that fraudulent billing practices for PMDs have been a substantial problem, evidenced by an approximate 350 percent increase in billings for these devices in 1999 to 2003, we believe that it would be contrary to the public interest to delay a regulation intended to stem the abusive billing practices of certain DME suppliers. We believe that requiring the physician or treating practitioner to submit to the DME supplier the prescription along with the pertinent parts of the medical record that demonstrate the medical necessity for the PMD, and the requirement that the supplier must obtain the prescription and supporting documentation prior to dispensing the PMD will address some of these abusive billing practices by restraining the billing for PMDs outside of bona fide patient care activity. The additional payment to the physician or treating practitioner is consistent with these changes.

On May 5, 2005, CMS issued a new National Coverage Decision (NCD) for Mobility Assistive Equipment, which includes power mobility devices. In addition, in September 2005, the Certificate of Medical Necessity (CMN) for power wheelchairs and POVs will expire. These changes, plus the changes made by MMA and through this regulation will provide greater certainty in this area and assist suppliers of PMDs in complying with not only the mandates of MMA but also the new NCD. Specifically, new requirements for specific content of the written prescription, the submission of pertinent portions of the medical record, and the submission of additional supporting information, together with elimination of the CMN, and the additional payment, operationalize the NCD requirements and statutory changes in ways that will not only bring more certainty to all participants, but also greatly reduce the risk that a supplier will be denied payment through no fault of its own. Delaying any element of these interrelated changes will jeopardize the smooth implementation of these reforms.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this as an interim final rule. We are providing a 90-day public comment period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide a 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comments on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the

affected public, including automated collection techniques.

To be able to address public comments on these information collection requirements prior to the effective date of this rule, written comments and recommendations will be considered from the public if received by the individuals designated below by September 26, 2005.

We are soliciting public comment on each of these issues for the following section of this document that contains information collection requirements:

Section 410.38 Durable medical equipment: Scope and conditions.

Certificate of Medical Necessity (CMN) Discussion

The Certificate of Medical Necessity (CMN) was previously established to allow efficient adjudication of claims by automating the submission of certain information needed to make medical necessity determinations. CMS implemented a CMN requirement for certain items of DME under section 1834(j)(2) of the Act and applied that requirement to payment claims for manual wheelchairs, motorized wheelchairs and power-operated vehicles (scooters) since the items were potentially subject to abuse by unscrupulous DME suppliers. The historical coverage criteria for these items were subjective and interpreted differently by clinicians; services that were not medically necessary were described in a manner that made those services appear to be medically necessary. The CMN was created to eliminate some of the subjectivity associated with this decision making process.

Recently, a CMS contractor completed an analysis of the utility of each CMN and found in some cases a 45 percent rate of non-compliance of CMNs. This finding underscored the belief that the CMNs do not accurately reflect the contents of the physician's medical record. Some portion of this non-compliance is attributed to failure to fully understand coverage criteria.

With the publication of the national coverage determination on Mobility Assistive Equipment in May 2005, CMS provided guidance on how contractors are to determine whether PMDs have been appropriately prescribed. As a result, physicians, treating practitioners and suppliers better know how to properly evaluate and document a beneficiary's medical condition and appropriately prescribe PMDs. Therefore, we have determined that the practical utility of a CMN, given the function-based approach to coverage, is questionable and for these reasons, the continued use of a CMN for power wheelchairs or power-operated vehicles is no longer required.

CMS previously estimated that the burden associated with the completion and collection of the CMNs for power mobility devices as 38,192 hours or approximately 12 minutes per CMN. This burden estimate included the time required for physicians to extract data from the medical record, record that on the CMN, and forward the CMN to the supplier. It did not include the burden of the physician writing the prescription itself. It included the time required for the supplier to determine, when a beneficiary was seen for a PMD, whether a CMN had been submitted and, if so, whether it contained the necessary physician information; to notify the physician if additional information was needed; to collect and enter the supplier information on the CMN; and to store the CMN. Eliminating the CMN results in the elimination of this burden for both physicians and suppliers.

Section 410.38(c)(2)(ii) states that Medicare Part B will pay for a power mobility device if the physician or treating practitioner writes a prescription, which is received by the supplier within 30 days after the date of the face-to-face examination of the beneficiary. The burden associated with writing the prescription is the time and effort necessary for the physician or treating practitioner to draft a prescription that contains the information required by this regulation. CMS estimates that it will take approximately 2 minutes for the physician or treating practitioner to prepare and submit the prescription, and that 187,000 PMD prescriptions will be submitted each year, for a total annual burden of $187{,}000 \times 2 \div 60 = 6{,}233$ hours.

Section 410.38(c)(2)(iii) requires physicians and treating practitioners to collect and submit to suppliers supporting documentation from the beneficiary's medical records which demonstrates that the item being provided is medically necessary. This is in addition to writing and submitting the prescription to the supplier. *Section 410.38(c)(5)(i)* requires a supplier to maintain a copy of the PMD prescription and supporting documentation to support its claim for payment for the prescribed PMD and to make this information available to CMS and its agents upon request. CMS believes that this overall physician and supplier burden is similar to the burden we previously estimated for a CMN.

The burden includes physicians identifying parts of the medical record, having them copied, and giving them to the beneficiary with the prescription. In some instances, the physician might need to submit additional information at the request of the supplier. On the supplier side, the burden includes receiving the documentation, reviewing the documentation to ensure it is complete, and storing the documentation. In some instances, the supplier may determine that the medical record documentation may not be sufficient to meet CMS documentation requirements and may request that the physician submit more information such as additional chart notes which document medical history.

Overall, as discussed above, we believe that there will be a shift in the burden of information collection from the supplier to the physician. CMS estimates that this combined burden will be no more than 10 minutes. We have previously estimated that 187,000 prescriptions for these devices will be written yearly. This will result in an estimated burden of 31,167 hours ($187{,}000$ prescriptions $\times 10$ minutes $\div 60$).

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–3017–IFC, 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: Christopher Martin, CMS Desk Officer, CMS–3017–IFC, *Christopher_Martin@omb.eop.gov.* Fax (202) 395–6974.

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 Congressional Review Act, the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

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 rules with economically significant effects ($100 million or more in any 1 year). The Congressional Review Act imposes a similar requirement, and provides for the Congress to review major rules.

In analyzing the effects of this regulation, we believe that most physicians are already conducting a face-to-face examination before prescribing a wheelchair. Also, though treating practitioners are now allowed to prescribe PMDs, we do not believe that these changes will significantly alter the number of prescriptions for PMDs. This rule also removes the requirement that a specialist order a POV. Given that physicians and treating practitioners can now prescribe POVs, we believe as a result of this regulation that more PMD prescriptions will be for POVs, rather than the more expensive power wheelchairs. In addition, in conjunction with this rule, an additional payment will be made to physicians and treating practitioners for the submission of the written prescription and pertinent parts of the medical record to the DME supplier. Taken together, we believe that the impact of these changes as a result of this regulation will have minimal net impact on the Medicare program.

While we believe that the net impact on Medicare reimbursements for PMDs of this rule and the recently published NCD will be minimal, the provisions of this rule will likely cause a shift in the composition of the PMDs reimbursed by Medicare. We expect that this rule will result in a shift in PMD prescriptions from power wheelchairs to POVs. We have no empirical basis for projecting shifts in market share. Nor do we have a basis for discriminating between the shift that is the result of the NCD and the shift that is a result of this rule. However, we believe that the Congressional decision to allow a broader range of physicians and treating practitioners to prescribe POVs will lead to an increased number of POV prescriptions. This shift could well be 10 percent or greater. If 10 percent or more of the estimated 175,000 power wheelchair prescriptions in FY 2004 shifted from power wheelchairs to POVs (with the total unchanged at 187,000 prescriptions for both categories of PMDs), this would imply reduced sales for the former of $84 million (assuming an average cost of $4,800) and increased sales of the latter of $35M (assuming an average cost of $2,000). Accordingly, we are classifying this as an economically significant rule under EO 12866, and as a major rule under the Congressional Review Act.

Under the Executive Order, we analyze the benefits, costs, and alternatives of major rules. While difficult to quantify, we believe that Medicare beneficiaries will benefit from the increased ability to obtain POVs. Beneficiaries would gain both from the increased utility of the less cumbersome devices, and from reduced cost-sharing (on average, $560 in decreased coinsurance if average costs of the devices were $2,000 and $4,800, respectively). We expect the shift in the composition of prescriptions to result in a net minimal impact on the value of Medicare reimbursements for PMDs. Since manufacturers typically produce both types of PMDs (other than specialty ''high end'' manufacturers unaffected by this rule), we expect the net effect on PMD manufacturer revenue from Medicare reimbursement of PMDs should be negligible.

There are other costs and benefits. Taxpayers, suppliers, and patients will all gain from increased accuracy in prescribing and increased certainty of proper payment. The increased burden on physicians and treating practitioners from the new analytic and documentation requirements will be offset by the new add-on payment we are implementing with this rule. As discussed in the preceding PRA analysis, suppliers will face decreases in record-keeping requirements. None of these other effects are economically substantial (for example, increased payments to physicians and treating practitioners are likely to be on the order of $5 million annually). As a result, we believe that the predominant effects of this rule are both positive and substantial, and that the benefits of this rule outweigh its costs.

We do not believe that any reasonable alternatives exist that would alter these conclusions or lead to even larger economic benefits. The primary causes of these effects were the Congressional decisions to allow a substantial increase in the number and types of providers allowed to prescribe POVs, and to require a face-to-face examination. We are required to implement those statutory changes. Coupled with our recent national coverage decision, other implementing details in this rule (especially improved documentation for suppliers), and other planned reforms (physician and treating practitioner payments, improved classification of mobility assistive equipment, elimination of the CMN), we expect the needs of mobility-impaired beneficiaries to be better met, and the needs of suppliers to be better met, than under any alternative set of reforms.

We welcome additional information on the likely effects of this rule, and suggestions for changes that would improve the 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 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 have determined that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, the RFA does not require such analysis for rules that, like this one, do not require a proposed rule.

However, we appreciate that there are three classes of small entities that will face impacts and we address their potential concerns. Furthermore, HHS policy is to voluntarily analyze impacts on small entities if there is even a possibility of significant impact. The analysis that follows, together with the preceding impact analysis and other information in this preamble, constitutes an Initial Regulatory Flexibility Analysis.

First, equipment manufacturers may be affected if substantial changes in the market for PMDs arise from this rule. As indicated previously, we expect the principal economic effect of this rule to be to shift prescriptions from one class of equipment, power wheelchairs, to another class of equipment, POVs. That effect will arise largely among those Medicare beneficiaries who can operate a POV and do not, therefore, require a power wheelchair. The manufacturing of these two types of equipment is dominated by a handful of firms. Most of these firms produce both types of vehicles and can presumably shift production from one line to another without incurring major cost. As indicated previously, volume increases likely to occur independently of this rule may obviate the need for any such shifts. Accordingly, we do not believe that the impact on these entities will be significant, nor that a substantial number of ''small'' entities will be affected. We note that there are a number of small firms that specialize in ''high end'' equipment for patients with very severe mobility impairments who need highly specialized equipment or accessories. We believe these firms will be unaffected by this rule, as the

segment of the market they serve would not be candidates for POVs.

Second, physicians and treating practitioners gained a great deal of important new guidance through our recent national coverage decision. The newly added classes of treating practitioners will benefit in their ability to serve their patients by prescribing the equipment most suitable to their needs. Nonetheless, there is some inconvenience associated with more complex decision algorithms and the documentation requirements added by this rule. These costs do not rise to the level of ''significant'' within the standards of the RFA, but we nonetheless plan to ameliorate them through additional payment when PMDs are prescribed.

Third, suppliers of durable medical equipment include thousands of firms, both large and ''small'' within the RFA definitions. The principal effect of this rule on these suppliers will be to increase their ability to assure that prescriptions are valid (in terms of medical necessity) before they supply equipment to beneficiaries, and that they will therefore be reimbursed for equipment they supply. This is a positive effect rather than a negative effect (the RFA requires consideration of alternatives that minimize adverse impacts). As previously indicated, we believe that there are few if any alternatives to this rule that would provide higher benefits.

We welcome additional information on the problems faced by small entities, comments on these conclusions, and suggestions for changes that would provide even greater benefits.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined and the Secretary certifies that this rule 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 requires that agencies assess anticipated costs and benefits before issuing any rule whose requirements mandate the expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, adjusted for subsequent inflation (that threshold is now approximately $120 million). This rule contains no mandates other than that for documentation of prescriptions, and hence does not remotely approach that cost threshold.

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. This regulation does not impose any costs or burden on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, and X-rays.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV, as set forth below:

PART 410 SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 1. The authority citation for part 410 is revised to read as follows:

Authority: Secs. 1102, 1834, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395m, and 1395hh).

Subpart B—Medical and Other Health Services

■ 2. Section 410.38 is amended by revising paragraph (c) to read as follows:

§ 410.38 Durable medical equipment: Scope and conditions.

* * * * *

(c) *Power mobility devices (PMDs).* (1) *Definitions.* For the purposes of this paragraph (c), the following definitions apply:

Physician has the same meaning as in section 1861(r)(1) of the Act.

Power mobility device means a covered item of durable medical equipment that is in a class of wheelchairs that includes a power wheelchair (a four-wheeled motorized vehicle whose steering is operated by an electronic device or a joystick to control direction and turning) or a power-operated vehicle (a three or four-wheeled motorized scooter that is operated by a tiller) that a beneficiary uses in the home.

Prescription means a written order completed by the physician or treating practitioner who performed the face-to-face examination and that includes, the beneficiary's name, the date of the face-to-face examination, the diagnoses and conditions that the PMD is expected to modify, a description of the item (for example, a narrative description of the specific type of PMD), the length of need, and the physician or treating practitioner's signature and the date the prescription was written.

Treating practitioner means a physician assistant, nurse practitioner, or clinical nurse specialist as those terms are defined in section 1861(aa)(5) of the Act, who has conducted a face-to-face examination of the beneficiary.

Supplier means a durable medical equipment (DME) supplier.

(2) *Conditions of payment.* Medicare Part B pays for a power mobility device if the physician or treating practitioner, as defined in paragraph (c)(1) of this section:

(i) Conducts a face-to-face examination of the beneficiary for the purpose of evaluating and treating the beneficiary for his or her medical condition and determining the medical necessity for the PMD as part of an appropriate overall treatment plan;

(ii) Writes a prescription, as defined in paragraph (c)(1) of this section, which is provided to the beneficiary or supplier, and is received by the supplier within 30 days of the face-to-face examination.

(iii) Provides supporting documentation, including pertinent parts of the beneficiary's medical record (*e.g.*, history, physical examination, diagnostic tests, summary of findings, diagnoses, treatment plans and/or other information as may be appropriate) that supports the medical necessity for the power mobility device, which is received by the supplier within 30 days after the face-to-face examination.

(3) *Exceptions.* (i) Beneficiaries discharged from a hospital do not need to receive a separate face-to-face examination as long as the physician or treating practitioner who performed the face-to-face examination of the beneficiary in the hospital issues a PMD prescription and supporting documentation that is received by the supplier within 30 days after the date of discharge.

(ii) Accessories for PMDs may be ordered by the physician or treating practitioner without conducting a face-to-face examination of the beneficiary.

(4) *Dispensing a power mobility device.* Suppliers may not dispense a

PMD to a beneficiary until the PMD prescription and the supporting documentation have been received from the physician or treating practitioner who performed the face-to-face examination of the beneficiary. Such documents must be received within 30 days after the date of the face-to-face examination.

(5) *Documentation.* (i) A supplier must maintain the prescription and the supporting documentation provided by the physician or treating practitioner and make them available to CMS and its agents upon request.

(ii) Upon request by CMS or its agents, a supplier must submit additional documentation to CMS or its agents to support and/or substantiate the medical necessity for the power mobility device.

(6) *Safety requirements.* The PMD must meet any safety requirements specified by CMS.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 28, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 3, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–17098 Filed 8–24–05; 2:30 pm]

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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 "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_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.

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H.J. Res. 59/P.L. 109–49
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S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

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S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

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